

KIRKLAND & ELLIS
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

0000002

163104

200 East Randolph Drive
Chicago, Illinois 60601

Reed S. Oslan
To Call Writer Direct:
312 861-2166

312 861-2000

Facsimile:
312 861-2200

November 28, 1995

VIA MESSENGER

Carol Graszer Ropski
U.S. EPA - Region V
HSE-5J
77 West Jackson Boulevard
Chicago, Illinois 60604

Re: General Notice Of Potential Liability - Dutch Boy Site

Dear Ms. Ropski:

I am responding to your November 17, 1995 general notice letter to NL Industries, Inc. relating to the above-referenced site. I received your letter on November 22, 1995.

Frankly, NL was surprised to receive U.S. EPA's letter, given that this site has been the subject of two, separate court actions for many years. Both the Illinois Environmental Protection Agency and the City of Chicago have asserted claims seeking the same relief now being sought by U.S. EPA. Indeed, the City of Chicago matter is likely to be tried in the Circuit Court of Cook County early next year.

NL is not responsible for the present environmental conditions at the subject site because, among other things, the site was not contaminated at the time NL sold its Dutch Boy paint business to Artra Group in 1976. This conclusion is supported by U.S. EPA's own site assessment which indicates that the contamination at the site resulted from "wrecking operations." (p. 2-2) NL believes that any releases at the site were caused solely by the acts or omissions of third parties, namely Mr. Lavon Tarr and Wrip Wrecking, and perhaps others. These entities undertook an illegal demolition of the structures on site in 1983, many years after NL had sold the site, which caused releases into the environment. Prior to those demolition activities, there were no environmental problems or concerns at the site.

KIRKLAND & ELLIS

Carol Graszer Ropski
November 28, 1995
Page 2

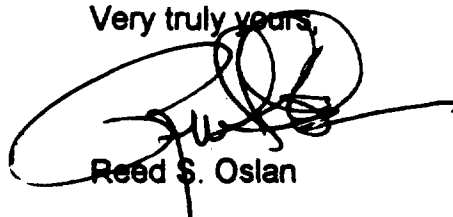
Moreover, IEPA conducted a removal action in 1986-1987 in order to abate any imminent and substantial endangerment to the environment presented by the debris from the demolition activities. If U.S. EPA believes the site presently poses an imminent threat, that threat certainly arose after NL ceased all contact with the site and NL has no responsibility for such conditions.

I am enclosing a copy of a brief we recently filed in the City of Chicago matter which demonstrates that NL is not responsible for the present condition of the site. There is substantial evidence supporting NL's position, including an affidavit from IEPA's project manager for the Dutch Boy remediation - - - she indicates that no environmental problems existed at the site before the demolition activities in 1983, at least six years after NL sold the business.

In short, given that this site is the subject of two pending court actions and NL is not responsible for the conditions at the site, NL will not agree to conduct the work suggested by U.S. EPA. Moreover, because the City of Chicago action, which involves an identical request by the City to have NL remediate the site, will be tried in the near future we believe U.S. EPA should defer to the pending action.

If you would like to discuss this matter, please call me. Otherwise, please advise me of U.S. EPA's plans at the site.

Very truly yours,



Reed S. Oslan

Enclosure

cc. Marcus Martin, Esq.
William Chamberlain, Esq.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO,

Plaintiff,

v.

NL INDUSTRIES, INC. and ARTRA GROUP, INC.,

Defendants;

No. 91 CH 04534

Judge Green

NL INDUSTRIES, INC.,

Counterclaim Plaintiff and Counterclaim Defendant,

v.

ARTRA GROUP, INC.,

Counterclaim Defendant and Counterclaim Plaintiff.

**NL INDUSTRIES INC.'S MEMORANDUM IN SUPPORT
OF ITS MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

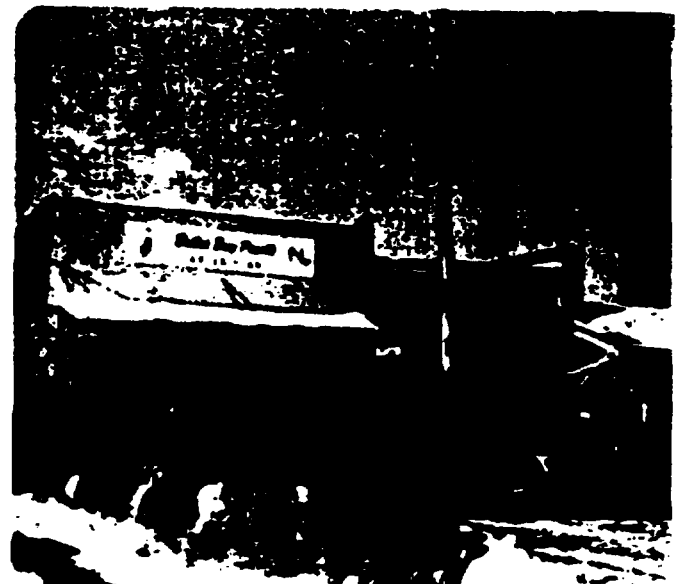
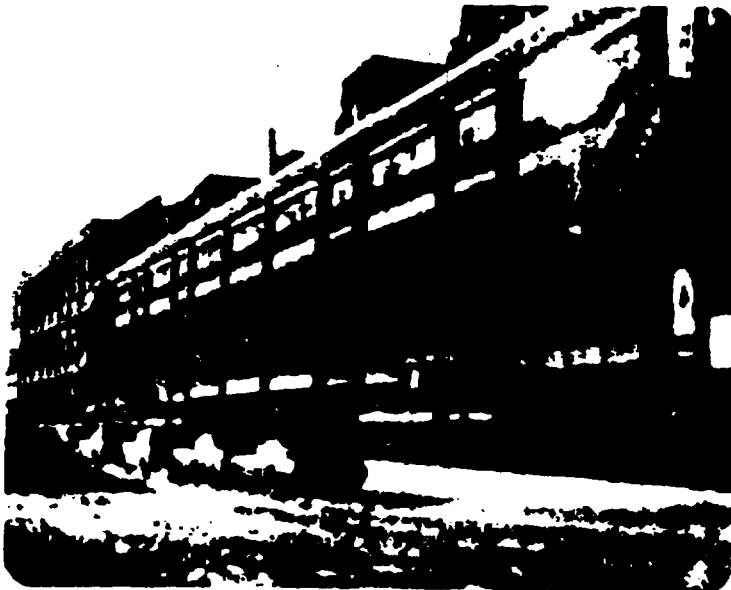
Nearly five years ago, the City of Chicago brought this action alleging that NL is responsible for certain conditions existing at an industrial property that NL has had no connection with for over 18 years. In its effort to have this Court adopt a radical and unprecedented expansion of the law of nuisance in Illinois, the City seeks to hold NL responsible for conditions that did not exist at the time NL owned the property, but that first arose many years after NL sold the Site to ARTRA. The City even claims NL is liable for the City's cleanup of "fly-dumping" that occurred at the Site *after* an Illinois Environmental Protection Agency ("IEPA") cleanup of the property in 1985-1986 -- ten years after NL's last contact with the property.

There is no dispute that the activities of subsequent property owners and third parties -- certain improvident demolition activities in 1983 in particular -- created the conditions about which the City now complains. Despite nearly five years of litigation and discovery, the City has uncovered no

evidence that any of the alleged nuisance conditions existed during NL's period of ownership. Under Illinois law, NL cannot be held responsible for conditions first caused or created by others after NL sold the business involved. Accordingly, NL is entitled to judgment as a matter of law and the City's claims must fail.

BACKGROUND

In 1976, NL sold its Dutch Boy Paints Division to the ARTRA Group. According to photographs contained in a 1976 appraisal of the property, at the time of the NL sale to ARTRA, the Site was well-maintained and in good operating condition:



See also Conroy Dep at 80, 84; Jarvis Dep at 114-122)(Exs A & B) With that sale, ARTRA took ownership, possession and control over the Dutch Boy location in south Chicago (Conroy Dep. at 18) Prior to the sale, NL manufactured lead products and paints at that location for many decades (Licking Dep. at 117, 123-25)(Ex. C) ARTRA purchased the location with the intention of manufacturing paint products as well. (Conroy Dep at 18, 22) At the time ARTRA purchased the Site, it had no intention of closing the plant (Id.)

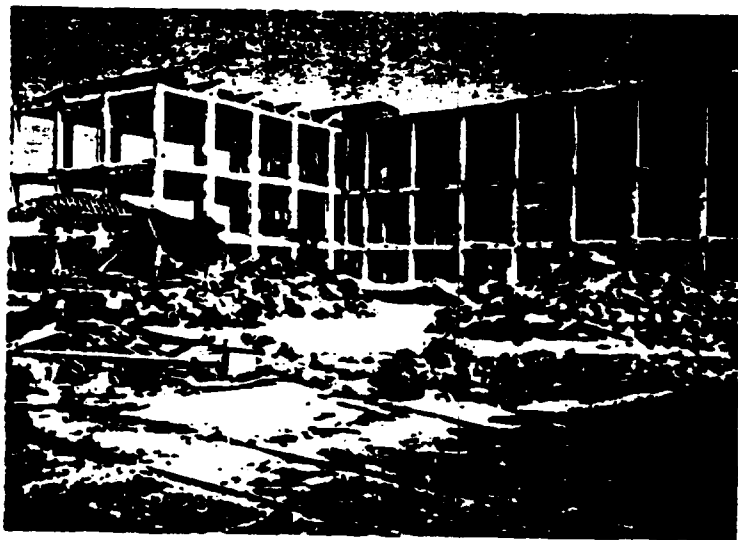
Indeed, ARTRA continued to operate at the south Chicago property for approximately four years During its operations, ARTRA used all the buildings and storage tanks at the Site (Conroy Dep. at 25-50). NL had no involvement with the Site after mid-1977 (Id. at 85)

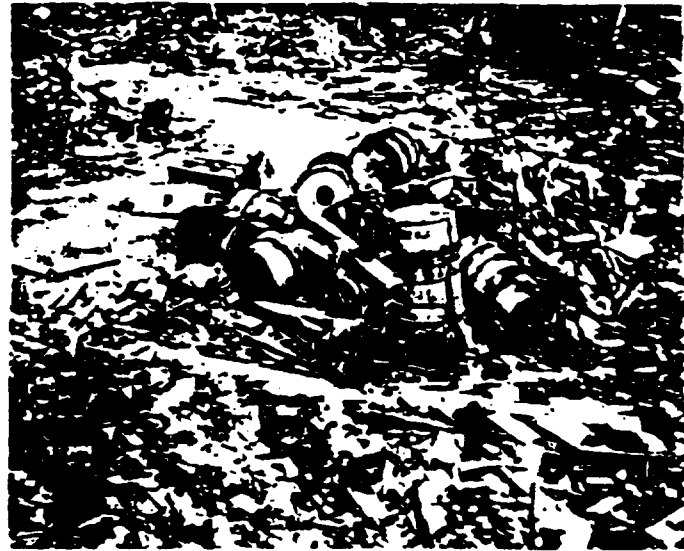
In 1980, ARTRA sold the Dutch Boy business -- the name and some of the assets -- to Sherwin Williams Because Sherwin Williams already owned a Chicago plant, it did not purchase the Dutch Boy Site. (Conroy Dep. at 54-56)(Schultz Dep. at 20)(Ex D) ARTRA then decided to close the plant, sold all the equipment and scrap it could, and looked into selling the property. (Conroy Dep at 62-71; Schultz Dep. at 29-38) Faced with a rather dismal real estate market and substantial carrying costs, ARTRA decided to donate the property to Goodwill Industries, a charitable organization. (Conroy Dep at 86-87; Schultz Dep. at 64, 78) According to Site photographs contained in a 1980 property appraisal conducted by ARTRA, at the time of the donation to Goodwill, the Site was still in good shape:



(See also Conroy Dep at 75-79, Jarvis Dep at 122-127, Schultz Dep at 91-93)

Goodwill, in turn, through a series of trust transfers and assignments, conveyed the property to a local businessman, Lavon Tarr. Mr. Tarr, hoping to capitalize on the purchase, promptly retained Wrip Wrecking Co. to demolish all the buildings on the property. (See Ex. E) During this demolition, however, the City of Chicago building inspector filed an action against Tarr and Wrip Wrecking to cease and desist all efforts to demolish the buildings because they were in violation of the buildings code and were causing a health hazard. (See Exs. F & G) These negligent, and illegal, demolition activities caused the release of hazardous substances. "[T]he incomplete demolition of the premises has resulted in the release of toxic lead and asbestos dust to the open air, posing an imminent hazard to the surrounding community." (Ex. H) As photographs from this time reveal, the conditions at the Site changed dramatically after NL's sale to ARTRA and ARTRA's transfer to Goodwill.





The IEPA was then called in to conduct an investigation and remediation of the Site, which was completed by late 1986 at a cost of several million dollars (Dinkel Affidavit at ¶¶ 4-6)(Ex. I). IEPA had no interest in the Site before the demolition and, in fact, specifically concluded that the release of lead and asbestos at the Site was caused by the improper demolition activities (Id. at ¶¶ 3, 5). The IEPA action eliminated any imminent threat at the Site. (Id. at ¶4)

Since 1986, the property has been used from time-to-time as an illegal "fly-dumping" location and otherwise has laid dormant (Cmplt. ¶¶32-33, see also Ursetto Dep. at 35-36, Wortel Dep. at 52)(Exs. J & K). The City conducted a cleanup of the trash and garbage on the Site in 1991, but no further action has taken place with respect to any environmental or health issues (See Ursetto Dep. at 55, Wortel Dep. at 51).

NL has had no contact with the Site for over 18 years

ARGUMENT

I. Under Illinois Law, NL Cannot Be Held Liable For Conditions Caused By Others After NL Transferred The Dutch Boy Business And Property.

This Court already has ruled that the nuisance standard to be applied in the case would give rise to liability for NL only if NL caused the conditions prior to transferring the business and the nuisance conditions continued after the transfer: "[T]his Court is of the opinion that the past owners that create a nuisance upon property cannot rid themselves of liability arising therefrom by the transfer of the property to another." (Oct. 17, 1991 Opinion, p. 11)(Ex. L) In ruling that the City had sufficiently alleged its nuisance claim against NL *and* "taking these allegations as true," the Court denied NL's motion to dismiss this action for failure to state a claim. (Oct. 17, 1995 Opinion, p. 14)

The Court's prior ruling is consistent with the applicable provisions of the Restatement of Torts. The Restatement, which was also cited by this Court in the earlier opinion, provides that "a vendor of land is not liable for a nuisance caused solely by an activity carried on upon the land *after he has transferred it.*" Restatement (Second) of Torts, §837(2)(emphasis added).

Here, however, the City seeks to radically expand Illinois' nuisance law to hold NL liable for conditions that *did not exist* when NL sold the property, but that arose from activities occurring many years *after* NL transferred the Dutch Boy business and the Site to ARTRA. As demonstrated below, none of the "offending conditions" existed at the Site until well after NL sold the Dutch Boy business and, thus, NL cannot be responsible for abating those conditions.

II. The Alleged Nuisance Conditions Did Not Exist During NL's Ownership Of The Property, Nor At The Time NL Transferred The Business And Property To ARTRA.

The City claims that the Dutch Boy Site is a nuisance because of the following conditions:

- There is a semi-demolished building on Site. The building continues to deteriorate and remains a hazard and danger to the public. (Cmplt, ¶27)
- The Site attracts fly-dumpers because it is not secured. (Cmplt, ¶¶32-33)

- Lead and asbestos remain on the property in the soils and threaten the public health and safety. (Cmplt, ¶26)
- NL and ARTRA failed "to provide adequate containers, safety measures, storage, disposal, and security measures for hazardous substances [at the Dutch Boy Site.]" (City's Resp. to NL's 1st Set Interrog., No. 10)¹

There is no evidence, however, demonstrating or even suggesting that any of the above conditions existed at the time NL transferred the property to ARTRA in 1976-1977. The City would have this Court believe the Site was an environmental disaster under NL's watch. In fact, the property was a properly maintained, fully-functioning plant, with no environmental hazards or dumps and all structures were standing and structurally sound.

John Conroy, an ARTRA corporate representative involved in ARTRA's purchase of the Dutch Boy business and its operations at the Site, describes the Dutch Boy plant at the time of NL's sale as being well-maintained, orderly, and clearly not a nuisance:

Q: So I take it you would agree that at the time ARTRA purchased the Dutch Boy plant on the south side of Chicago, the buildings were in reasonably good working order?

A: Yes.

Q: At the time that ARTRA purchased the plant, did ARTRA have any concerns about the condition of the property?

A: No.

Q: At the time ARTRA purchased the plant, were the buildings in reasonably good shape?

A: Yes.

Q: At the time that ARTRA purchased the Dutch Boy property from NL, were any of the buildings in a demolished or partially demolished state?

A: No.

¹ The City *does not* allege that the Site is a nuisance due to any possible worker exposure to lead from plant operations. Such facts, if they could be proved, would be irrelevant in that they relate to conditions entirely inside plant buildings when the facilities were operated. They have no bearing on conditions outside the buildings or off-site at that time, let alone present condition of the property.

Q: At the time that ARTRA purchased the Dutch Boy plant in Chicago from NL, were there any dump sites on the property for waste materials?

A: No.

Q: At the time that ARTRA purchased the Dutch Boy site in Chicago from NL, was there any evidence of an environmental problem or concern on the site?

A: Not in the paint manufacturing operation, no.

Q: At the time that ARTRA purchased the Chicago Dutch Boy plant from NL, was there any evidence or indication that the site posed a nuisance?

A: None.

Q: At the time that ARTRA purchased the Dutch Boy plant from NL Industries, was there any evidence of any complaints regarding the condition of the property?

A: No.

Q: At the time that ARTRA purchased the Dutch Boy plant in Chicago from NL Industries, did ARTRA require NL to conduct any clean up at the site?

A: No.

Q: At the time that ARTRA purchased the Dutch Boy plant in Chicago from NL, was there any indication of any fly dumping at or near the property?

A: No.

Q: At the time that ARTRA purchased the Dutch Boy plant in Chicago from NL Industries, did ARTRA believe that the site had been well-maintained?

A: Yes.

Q: At the time that ARTRA purchased the Dutch Boy Plant from NL, did ARTRA have any concern whatsoever regarding the conditions of the property outside any of the structures?

A: No.

(Conroy Dep. at 22-25; see also Jarvis Dep. at 130-131) Mr. Conroy's description of the plant at the time of the NL sale to ARTRA is confirmed by appraisal photographs of the property taken at the time of the 1976 sale. (See pp. 2-3 *supra*.)

The testimony of two former NL employees regarding the conditions at the Site during

NL's operations and at the time of the transfer to ARTRA further confirm that no nuisance conditions existed at the property: Chester Licking, a former NL plant manager at the Site and an employee from 1929 until 1971, testified as follows:

Q: Mr. Licking, to your knowledge was there ever any dumping of waste on the property from 1929 to 1971?

A: There was no dumping of waste on the property at National Lead Carter plant, from 1929 to 1971, while I was there.

* * *

Q: [Assuming that] fly dumping means that somebody comes onto a property, trespasses onto it without permission, and dumps something on it and leaves without permission again. Or midnight dumping, the same connotation. Was there any fly dumping or midnight dumping taking place on the property from 1929 to 1971?

A: No, no, there was not. The site for the plant was closed off at the north with an eight-foot wire fence with a gate with barbed wire on top. The other opening - only other opening from the buildings ... there was a gate across those railroad tracks. The area and -- the opening in front of that is where the trucks were coming in when they were unloading or loading for the warehouse. And there were no dumping on those sites at all.

(Licking Dep. at 48, 56-57) Nor, according to Licking, were there demolished or partially demolished buildings on the Site -- another purported nuisance condition complained of by the City -- during the period that NL owned the Site:

Q: Mr. Licking, when you retired, can you describe the conditions of the buildings on the property?

A: When I retired, the buildings were in good condition. Exterior steel window frames were painted. The brickwork was tuck pointed where needed. The sidewalks and driveways had been -- had replaced those. It was in good condition.

Q: Were the buildings structurally sound?

A: The buildings were structurally sound, very.

(Id. at 53-54) Mr. Licking further testified that NL maintained a neat and tidy plant with extensive pollution control devices:

Q: ...[W]ere the pollution controls on [the manufacturing systems at the plant]

consistent with the state-of-the-art in the industry, as you understood it, at the time?

A: Yes, I think they were consistent with the collection systems and in excess of the normal collections systems in operation at the time.

Q: What do you mean by "in excess"? Do you mean better than or worse than?

A: They were better. They were larger in most cases. In all cases, that I recall.

* * *

Q: Did the City ever cite the plant for improper lead dust collection?

A: Not that I recall. And I think I would have known even when I was no longer in the management system.

* * *

Q: Were the pollution control devices that were in place in 1946 state-of-the-art mechanisms?

A: I think so yes. Some of the changes that were made as a result -- during the World War were the best that we could find.

Q: Okay. And when you say the best that you could find, what do you mean? Did you read articles?

A: Read articles and based on the experience of other people who had used dust collection equipment.

* * *

Q: In 1971, were the pollution control mechanisms at the plant state of the art?

A: I would -- I think so.

Q: Okay. What's your basis for saying that?

A: That I had -- I had not heard of any others that were better or equal. They were -- I had heard of some that were equal, but I had not heard of any that were any better....

(Id. at 48, 53-54, 527-28)

Similarly, the testimony of Clarence P. Smith, NL's plant manager at the time of the sale to ARTRA, confirms that the alleged nuisance conditions did not exist while the property was owned by

NL. Contrary to the City's unsubstantiated claim that NL discarded and disposed of hazardous wastes at the Site, Mr. Smith -- who worked at the Site from 1946 through 1977 -- testified that no waste was disposed of at the Dutch Boy plant, and the property and buildings there were well-maintained:

Q: Mr. Smith, during the time you were at the plant, to your knowledge, was any waste ever disposed of in the plant site itself?

A: None ever.

Q: Could you summarize the condition of the plant during the time period you were there?

A: Well, the plant was maintained in good operating condition. The buildings were maintained, they were painted several time, whenever needed, during the period when I was there. Most the time when I was there, we had actually two painters which we carried full-time there. Their only duty was to keep the plant painted inside and outside and so forth and so on. So the plant was maintained in a very good operating condition.

Q: How would you characterize the cleanliness of the plant?

A: It was -- it was clean, and we kept it clean, which was one of the requirements of it because we realized there was some toxic substances in there. So it was never let to accumulate anything on the floor or in the areas such as that -- many times the beams were vacuumed and so forth. We had a central vacuum system which was used very much in areas where lead was being processed.

(Smith Dep. at 6-7)(Ex. M) Mr. Smith also testified that NL used extensive pollution control devices at the Dutch Boy plant, and this equipment compared favorably with other paint plants at the time:

Q: Mr. Smith, were you familiar with the type of pollution control equipment that was being used in the paint and the oxide industries?

A: Yes.

Q: How did you become familiar with the types of pollution control equipment that were available during the time you were there?

A: Through my contact with the [Dutch Boy] engineering department and, of course, all the time I was there and particularly in the oxide department when I operated the oxide department.

Q: Would you, for example, visit other plants?

A: Yes.

* * *

Q: Based on your visits with other plants and your conversations with counterparts at other companies, how did the NL Chicago plant stack up with other plant in the industry in terms of pollution control?

A: We were probably more aware of pollution control because of having been in the lead business prior to going into the paint business. We were more conscious of dust escaping and so forth and so on. We were probably more careful and had more collectors than most the paint plants did.

(Id. at 7-11) Mr. Smith further testified that NL did not receive complaints from neighbors about the operation of the plant. (Id. at 11) Indeed, at the time that Smith left the plant in July 1977, none of the purported nuisance conditions alleged by the City existed:

Q: Could you summarize the condition of the plant as of your last day there, which I take it was either July 1 or the last workday before July 1, 1977?

A: The plant was in good operating condition, and it was operating and producing paint and lead oxide.

Q: Were the buildings in good condition?

A: The buildings were in good condition.

Q: What was the state of security at the plant?

A: We had a security service who was there during the night hours. I think they started at 4:00 and operated until 7:00 the next morning. They furnished guards that patrolled the plant and made sure it was secure and locked up.... [T]hey made rounds hourly for the entire plant.

Q: On or before July 1, 1977, did you observe any dumping or illegal dumping by others on the property?

A: There was none. The guards sat in the front, and the back was always locked as soon as everybody left the plant.

Q: ...Do you recall any inspections of the effluent and municipal sewer from the plant?

A: Yes. The City of Chicago gave us a thorough inspection of the effluent that went from the plant. This, again, was in, I would say '72, '73. The City of Chicago sent up a team, and they installed monitoring devices in all the manholes and sewers leading from the plant, and they ran continuous monitors on the effluent for at least two or three days.

Q: Did they find any lead violations in the sewer?

A: They found no lead violations in the sewer.

Q: Were there any discharges onto the surface of the plant as opposed to the municipal sewer system?

A: No.

Q: Mr. Smith, did any governmental official during the time you were at the plant find that the plant was a nuisance?

A: Never.

(Id. at 21-23) Like that of Mr. Licking, Mr. Smith's testimony establishes that the Dutch Boy plant was not a public nuisance and that NL did not create a nuisance on the property.

Health and safety inspections by IEPA and *the City of Chicago itself* also indicate that the Site was not a nuisance when NL owned or operated it. At the end of 1977, an ARTRA employee, Mr. Terry M. Lay, wrote an internal memorandum to Mr. Conroy summarizing health and safety inspections from that year. (Ex. N) According to this memo, IEPA inspected the Site in July 1977 -- not long after NL's sale to ARTRA and just prior to NL's completion of its lead-oxide operations at the plant - - and found no violations. (Id.) Inspections were also conducted in 1977 by each of the following City of Chicago Departments: The Fire Prevention Bureau, the Department of Environmental Control, the Department of Boilers, the Department of Weights and Measures, the Elevator Department, the Department of Industrial Hygiene and the Building Department. Not a single one of these City departments found any violations at the Dutch Boy plant in 1977. (Id.) Mr. Conroy's testimony confirms the inspection results summarized in Lay's memo:

Q: If I could ask you to turn your attention to Exhibit 15, which is Mr. Lay's memo to you regarding inspections that occurred during 1977 at the Chicago plant, you indicated that this information was provided to you on your request; is that right?

A: That's correct.

Q: Mr. Lay was gathering this information and compiling this information for you as part of his job at ARTRA; is that right?

A: Correct.

Q: And Mr. Lay had personal knowledge or gained knowledge regarding each one of these inspections and was providing that information to you?

A: Correct.

Q: Now, you testified earlier that by the end of 1977, Dutch Boy had completed and closed its lead oxide operation; is that right?

A: Yes.

Q: So these inspections either occurred during the period that NL was operating the lead oxide equipment or immediately after they closed it down; is that right?

A: Yes.

Q: The second grouping of inspections reveals that the Illinois EPA inspected the facility in 1977; is that right?

A: That's correct.

Q: And the Illinois EPA after its inspection concluded that there were no violations at the Dutch Boy site and that no citation was issued; is that right?

A: That's correct.

Q: The City of Chicago also made numerous inspections at the site in 1977; is that right?

A: Yes.

Q: The first inspection was made by the Fire Prevention Bureau.... And, it shows here on the memorandum that both on May 11th and June 5th that the City of Chicago, Fire Prevention Bureau inspected the Dutch Boy plant and found no violations; is that correct?

A: That's correct.

Q: The Environmental Controls Department of the City of Chicago also made an inspection on May 18th; is that right?

A: That's right.

Q: And no violations were found; is that correct?

A: That's correct.

Q: Dropping down to the Department of Industrial Hygiene of the City of Chicago, are you familiar with this organization?

A: No, but I'm familiar with the function.

Q: Their function is to protect workers?

A: Yes.

Q: And they conducted an inspection of the ventilation systems, and they concluded in 1977 that there were no violations; is that right?

A: That's correct.

Q: And finally, the City of Chicago, Building Department also conducted an inspection of the buildings in 1977; is that correct?

A: Correct.

Q: And did the Buildings Department find any violations with respect to any of the buildings on the property in 1977?

A: No.

(Conroy Dep. at 179-182) If the City of Chicago and IEPA found no violations upon numerous inspections in 1977 when NL was operating the lead oxide equipment or immediately after they closed it down, and NL has not conducted any activities on the Site since then, NL could not have caused current Site conditions.

The City has not identified a single witness that can testify that the conditions at the Site today were created by NL or were present at the Site when NL transferred the business to ARTRA. Indeed, even the person attesting the City's interrogatory answers on this point admitted he knew of no support for the City's allegations. (Noonan Dep. at 45, 50, 55)(Ex. O) It is quite apparent that a subsequent property owner's improvident demolition activities at the Site and dumping by others are the cause of the conditions about which the City complains. According to Illinois law, and this Court's prior rulings in the case, NL simply cannot be held responsible for occurrences at the property after NL left.

III. NL Could Not Have Caused The Alleged Nuisance Conditions.

NL could not have caused the conditions that the City complains of, because NL had fully transferred its interest in the Site, and had terminated all contact with the Site, years before the conditions arose. There is no evidence that NL failed to provide adequate containers, safety measures, storage, disposal, and security measures for hazardous substances at the Dutch Boy Site. The City simply cannot establish that NL's actions are the proximate cause of the conditions at issue. According to Illinois law, proximate cause is that cause that produces injury through natural and continuous sequence of events unbroken by any effective intervening cause. *Filipetto v. Village of Wilmette*, 254 Ill. App. 3d 461, 627 N.E.2d 60 (Ill. App. 1st Dist. 1993). Proximate cause is absent if independent acts of third persons break the causal connection between alleged original wrong and injury; the independent act becomes proximate or immediate cause of injury. *Thompson v. County of Cook*, 154 Ill.2d 374, 609 N.E.2d 290 (Ill. 1993). Here, a chain of independent acts of subsequent purchasers and third parties breaks the causal connection between NL's actions and the alleged public nuisance at the Dutch Boy Site.

The conditions about which the City complains did not exist when NL owned and operated the property. A complex chain of decisions and actions made or taken after NL's transfer caused those conditions. These events took place without NL's knowledge or involvement years after NL sold the business to ARTRA:

- A. ARTRA made the decision to close the plant. At the time NL sold the Site, ARTRA fully intended to operate at the Site for many years. (Conroy Dep. at 18, 22) Indeed, it was not until 1980 that ARTRA made the decision to close down operations at the Site. (Conroy Dep. at 56-57; Schultz Dep. at 64, 78) NL had no knowledge of or involvement in the decision to close the plant or to sell the assets and scrap. (Conroy Dep. at 60) If ARTRA would have continued operations, the conditions present at the Site would not exist today.

- B. ARTRA made the decision to donate the property to Goodwill. Without NL's knowledge or involvement, ARTRA decided to donate the property to Goodwill. ARTRA could have elected to put the property up for sale, but due to the large carrying costs -- i.e. taxes, insurance, security, heat -- ARTRA instead took the step that would rid it of the Site as quickly as possible. (Conroy Dep. at 86-87, 144-151; Schultz Dep. at 64, 78) If ARTRA would not have closed and donated the property to Goodwill, the conditions present at the Site would not exist today.
- C. ARTRA made the decision not to clean out any hazardous materials in the structures. Prior to the donation to Goodwill, ARTRA could have investigated and addressed any hazardous substances or materials on the property. Without NL's knowledge or involvement, ARTRA elected not to do so. If ARTRA would have cleaned out any hazardous materials, the conditions present at the Site would not exist today.
- D. Goodwill made the decision to convey the property to Lavon Tarr. Without the knowledge or involvement of NL, Goodwill conveyed the property to Lavon Tarr, a local businessman with limited means. If Goodwill would not have conveyed the property to Tarr, the conditions present at the Site would not exist today.
- E. Lavon Tarr decided to retain Wrip Wrecking to demolish the structures. Without the knowledge or involvement of NL, Tarr decided to demolish the buildings on the Site. (See Ex. E) If Tarr would have decided to keep the buildings as opposed to demolish them, the conditions present at the Site would not exist today.

F. Wrip Wrecking illegally demolished certain structures on the Site without first determining whether the buildings contained any hazardous materials. Without NL's knowledge or involvement, Wrip Wrecking illegally demolished several structures on the Site without first determining whether there were materials at the Site that might need special attention or consideration. This illegal activity was stopped by the City of Chicago building commission. (See Exs. F & G) If Wrip Wrecking would have conducted a proper, legal demolition of the buildings the conditions present at the property would not exist today.

While certainly there are other events that occurred after NL sold the Site which caused the conditions that now exist, these illustrate the point NL has been attempting to make all along: Without all these subsequent events, with which NL had absolutely no involvement or knowledge, no nuisance would have even been possible at the Site.

IV. The City's Fly-dumping Claim Is Frivolous.

A most telling illustration of the weakness of the City's position against NL in this case is the City's effort to hold NL responsible for "fly-dumping" that occurred at the Site AFTER 1986! (Cmplt., ¶¶32-33) (See also Ursetto Dep. at 35-36; Wortel Dep. at 52) It somehow argues that NL should be liable for the City's \$1 million-plus cleanup of illegal dumping caused by unknown third parties at the Site.

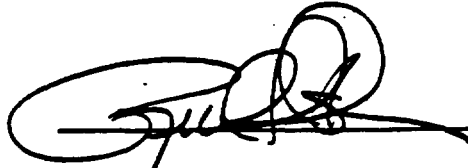
The City would like this Court to totally ignore that by the time this dumping occurred, IEPA already had remediated the Site once (see Ex. I) and NL had not been involved in the Site for over ten years. There simply is no basis under which NL could be responsible for these materials.

CONCLUSION

For the foregoing reasons, NL Industries, Inc. respectfully requests that the Court grant its motion for summary judgment and dismiss all claims against it with prejudice.

Respectfully submitted by:

NL INDUSTRIES, INC.


By Its Attorneys

Reed S. Oslan
Ellen Therese Ahern
Douglas Drysdale
KIRKLAND & ELLIS
200 East Randolph Drive, Suite 6100
Chicago, Illinois 60601
(312) 861-2000
Firm Identification No. 90443

DATED: November 15, 1995


OF COUNSEL:
Marcus A. Martin, Esq.
BARTLIT BECK HERMAN
PALENCHAR & SCOTT
The Kittridge Building
511 16th Street, Suite 700
Denver, Colorado 80202

CERTIFICATE OF SERVICE

Copies of the foregoing DEFENDANT NL INDUSTRIES, INC.'S MOTION FOR SUMMARY JUDGMENT and all supporting papers have been served on the following by messenger delivery this 15th day of November, 1995.

William Chamberlain, Esq.
Assistant Corporation Counsel
CITY OF CHICAGO
30 N. LaSalle Street, Room 900
Chicago, IL 60602
(312) 744-6075

Robert Haney, Esq.
KWLATT, SILVERMAN & RUBEN
537 N. Wells Street
Chicago, IL 60610
(312) 670-2300


Ellen Therese Ahern
One of the attorneys for NL Industries, Inc.

KIRKLAND & ELLIS
200 E. Randolph Drive, Suite 6100
Chicago, IL 60601
(312) 861-2000

v.

Defendants;

y.

Counterclaim Defendant and Counterclaim Plaintiff.

No. 91 CH 04534
Judge Green

**NL INDUSTRIES INC.'S EXHIBITS TO ITS MEMORANDUM
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

**Reed S. Oslan
Ellen Therese Ahern
Douglas Drysdale
KIRKLAND & ELLIS
200 East Randolph Drive, Suite 6100
Chicago, Illinois 60601
(312) 861-2000
Firm Identification No. 90443**

OF COUNSEL:
Marcus A. Martin, Esq.
BARTLIT BECK HERMAN
PALENCHAR & SCOTT
The Kittridge Building
511 16th Street, Suite 700
Denver, Colorado 80202

DATED: November 15, 1995

Victoria Court Reporting Services, Inc.
 123 WEST MADISON STREET SUITE 600 CHICAGO IL 60602-4511
 312/443-1025 FAX 312/443-1029

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)
 4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - CHANCERY DIVISION
 6 CITY OF CHICAGO,)
 7 Plaintiff,)
 8 v.) No. 91-CH-4534
 9 NL INDUSTRIES, INC. and)
 10 ARTRA GROUP, INC.,)
 11 Defendants.)
 12 -----
 13 NL INDUSTRIES, INC.,)
 14 Counterclaim Plaintiff and)
 15 Counterclaim Defendant,)
 16 v.)
 17 ARTRA GROUP, INC.,)
 18 Counterclaim Defendant and)
 19 Counterclaim Plaintiff.)
 20

21 The discovery deposition of JOHN PETER
 22 CONROY called by NL Industries, Inc. for
 23 examination, taken pursuant to the provisions of
 24 the Code of Civil Procedure and the Rules of the

ORIGINAL

1 Supreme Court of the State of Illinois pertaining
2 to the taking of depositions for the purpose of
3 discovery, taken before KIMBERLY A. SMITH, a
4 Notary Public within and for the County of
5 DuPage, State of Illinois, and a Certified
6 Shorthand Reporter of said state, at the Law
7 Offices of Kirkland and Ellis, Suite 56 South,
8 200 East Randolph Drive, Chicago, Illinois, on
9 the 10th day of May, 1995, at 10:10 a.m.

10 APPEARANCES:

11 CITY OF CHICAGO

12 By: STEPHEN I. PECK, ESQ.

13 and WILLIAM A. CHAMBERLAIN, ESQ.*

14 30 North LaSalle Street, Room 900

15 Chicago, IL 60602

16 312/744-6075

17 on behalf of the City of Chicago;

18 KIRKLAND & ELLIS

19 By: REED OSLAN, ESQ.

20 and ELLEN T. AHERN, ESQ.**

21 200 East Randolph Drive

22 Chicago, IL 60601

23 312/861-2166

24 on behalf of NL Industries;

1 Q Now, it appears that ARTRA purchased
2 the Dutch Boy business from NL Industries in late
3 1976; is that correct?

4 A That's correct.

5 Q Do you know the business reasons why
6 ARTRA decided to make that purchase?

7 A I don't.

8 Q Was it your understanding that ARTRA
9 intended to continue that business after the
10 purchase?

11 A Yes.

12 Q And that included not only operations
13 of the Dutch Boy business in Chicago, but also
14 the continued operation of other Dutch Boy
15 operations, correct?

16 A That's right.

17 Q Did ARTRA intend to change the Dutch
18 Boy business in any substantive manner at the
19 time it purchased the Dutch Boy business?

20 A I don't know that.

21 Q Do you have any reason to believe at
22 the time they made the purchase they intended to
23 change the operations?

24 A I don't know that. I have no reason

1 notice relates to the condition of the property
2 at the time that ARTRA purchased the properties
3 from NL Industries.

4 Are you in a position to testify
5 either based on your personal knowledge or based
6 on discussions with or the review of documents as
7 to the condition of the property at that time?

8 A Well, as far as I know, as far as I've
9 learned over the years, it was an operating
10 plant, a good operating plant, good facility.

11 Q So based on your understanding, the
12 Dutch Boy facility here in Chicago that ARTRA
13 purchased in 1976 was part of an ongoing business,
14 correct?

15 A That's correct.

16 Q Are you aware of any aspect of that
17 plant that was in any way in a state of disrepair
18 or that was inadequate for the purpose of
19 producing paint?

20 A No.

21 Q So I take it you would agree that at
22 the time ARTRA purchased the Dutch Boy plant on
23 the south side of Chicago, the buildings were in
24 reasonably good working order?

1 A Yes.

2 Q At the time that ARTRA purchased the
3 plant, did ARTRA have any concerns about the
4 condition of the property?

5 A No.

6 Q At the time that ARTRA purchased the
7 plant, were the buildings in reasonably good
8 shape?

9 A Yes.

10 Q At the time that ARTRA purchased the
11 Dutch Boy property from NL, were any of the
12 buildings in a demolished or partially demolished
13 state?

14 A No.

15 Q At the time that ARTRA purchased the
16 Dutch Boy plant in Chicago from NL, were there
17 any dump sites on the property for waste
18 materials?

19 A No.

20 Q At the time that ARTRA purchased the
21 Dutch Boy site in Chicago from NL, was there any
22 evidence of an environmental problem or concern
23 on the site?

24 A Not in the paint manufacturing

1 operation, no.

2 Q At the time that ARTRA purchased the
3 Chicago Dutch Boy plant from NL, was there any
4 evidence or any indication that the site posed a
5 nuisance?

6 A None.

7 Q At the time that ARTRA purchased the
8 Dutch Boy plant from NL industries, was there any
9 evidence of any complaints regarding the
10 condition of the property?

11 A No.

12 Q At the time that ARTRA purchased the
13 Dutch Boy plant in Chicago, Illinois from NL
14 Industries, did ARTRA require NL to conduct any
15 cleanup at the site?

16 A No.

17 Q At the time that ARTRA purchased the
18 Dutch Boy plant in Chicago from NL, was there any
19 indication of any fly dumping at or near the
20 property?

21 A No.

22 Q At the time that ARTRA purchased the
23 Dutch Boy plant in Chicago from NL Industries,
24 did ARTRA believe that the site had been

1 well-maintained?

2 A Yes.

3 Q At the time that ARTRA purchased the
4 Dutch Boy plant from NL, did ARTRA have any
5 concern whatsoever regarding the condition of the
6 property outside of any of the structures?

7 A No.

8 Q At the time that ARTRA purchased the
9 Dutch Boy plant in Chicago from NL, did the plant
10 have all necessary permits?

11 A Yes. I would assume that. I don't
12 know that.

13 Q Do you have an understanding of what
14 exactly was purchased by ARTRA from NL here in
15 Chicago in 1976?

16 A Yes, they purchased the assets of the
17 paint division.

18 Q When you say that ARTRA purchased the
19 assets of the paint business, can you tell us
20 what that included?

21 A Yes, the latex manufacturing paint,
22 the paint used to sell to homes and commercial
23 paint manufacturing facilities -- I'm sorry --
24 commercial paint manufacturing business,

1 whatever.

2 Q Did ARTRA purchase all of the
3 buildings in 1976, all the buildings on the
4 property?

5 A In Chicago?

6 Q Yes.

7 A Yes.

8 Q Did ARTRA purchase all of the
9 underground storage tanks on the property?

10 A Yes.

11 Q Did ARTRA purchase all the
12 above-ground storage tanks on the property?

13 A Yes.

14 Q Did ARTRA purchase all of the
15 inventories on the property?

16 A No.

17 Q What inventories do you believe that
18 ARTRA did not purchase?

19 A The lead oxide departments, all of the
20 lead-related items at the plant.

21 Q I want to get back to the lead oxide
22 issue in a minute. Aside from the equipment and
23 inventory relating to lead oxide, did ARTRA
24 purchase literally every other asset at the Dutch

1 Boy site in Chicago in 1976?

2 A I don't know if they purchased every
3 other one.

4 Q Do you have an understanding as you
5 sit here of assets that were not purchased by
6 ARTRA other than those relating to the lead oxide
7 business?

8 A Any lead-related product.

9 Q Other than the lead oxide equipment
10 and the lead-related products, do you believe
11 that ARTRA purchased everything else, all other
12 assets that were located at the Dutch Boy site in
13 Chicago in 1976?

14 A When I said "lead-related products,"
15 that would include raw materials, work in
16 process, finished goods.

17 Q Aside from those items, ARTRA
18 purchased everything else, correct?

19 A As far as I know.

20 MR. OSLAN: Why don't we mark this.

21 (ARTRA Deposition Exhibit
22 No. 3 marked as requested.)

23 BY MR. OSLAN:

24 Q We've marked ARTRA 3, which is also

1 Exhibit Number 9 to the Licking deposition that
2 has already been taken in this case. I'd like
3 you to take a look at that exhibit and then
4 describe it for the record, please.

5 A It appears to be a drawing of the site
6 of the old plant in Chicago, but it's undated.

7 Q Based on your review of this exhibit,
8 does that appear to be a true and accurate copy
9 of the structures and other items on the site in
10 the 1976-1978 time period?

11 A That appears to be accurate.

12 Q I notice on the lower right-hand
13 section of this exhibit that there's a reference
14 to an "oxide department." Is that the lead-oxide
15 department that you were referring to just
16 moments ago?

17 A That would be part of it, yes.

18 Q Can you describe for me specifically
19 the equipment that you believe ARTRA did not
20 purchase that related to that lead oxide
21 business?

22 A Well, anything to do with lead
23 manufacturing we did not purchase.

24 Q Can you be more specific?

1 A They had pots. They had forges. They
2 had -- I don't know -- cylinders. I don't know
3 what you call them. Long kilns.

4 Q Where was this equipment located at
5 the plant at the time that ARTRA purchased the
6 plant from NL?

7 A The south -- I'm sorry -- the
8 northeast corner, at least in that corner, and I
9 think Section 5, "corroding galleries."

10 Q I'm going to ask you to mark with an X
11 or two Xs if it's appropriate or three Xs if it's
12 appropriate the areas in the plant where the
13 equipment that ARTRA did not purchase was located.

14 THE WITNESS: Can I side bar with him?

15 MR. OSLAN: Sure.

16 (Recess.)

17 (Exit Ms. Ahern.)

18 THE WITNESS: I'm not certain about
19 Section 5 110.1, "corroding," but I think it's
20 possible.

21 BY MR. OSLAN:

22 Q You think it's possible that some of
23 the equipment was located there?

24 A I think it's possible that that also

1 was part of the lead oxide operation so I'll mark
2 that with an X and a question mark.

3 Q Is it your understanding that this
4 Building 5 was partially used for lead oxide
5 production and then also partially used for paint
6 production?

7 A I don't know that.

8 Q Do you know whether ARTRA used any
9 portion of Building 5 after it purchased the
10 site?

11 A I don't know that.

12 Q Who would be able to answer that
13 question?

14 A Terry Lay, Dick Jarvis.

15 Q What role did Mr. Lay have at the
16 plant?

17 A He was plant manager for a while.

18 Q And Mr. Jarvis?

19 A He was the following plant manager.

20 Q Approximately what years was Mr. Lay
21 the plant manager?

22 A 1979 -- 1978 to 19 -- mid 1979.

23 Q And Mr. Jarvis?

24 A Mid 1979 till the end.

1 Q Earlier you indicated that ARTRA
2 purchased all of the buildings, and I assume that
3 that included Building Number 5?

4 A Yes.

5 Q The structure, correct?

6 A Yes.

7 Q What I want to do now is walk through
8 this map from, for ease, left to right and have
9 you with this highlighter highlight the structures
10 and the buildings as we go through them.

11 On the left-hand side of this
12 exhibit, you first see "new warehouse 10A."

13 Did ARTRA purchase that warehouse?

14 A Yes.

15 Q Did ARTRA use that warehouse after the
16 purchase?

17 A Yes.

18 Q Did ARTRA make any changes to that
19 warehouse after the purchase, substantial
20 changes?

21 A No.

22 Q If you would go ahead and just
23 highlight that for me, that would be --

24 Immediately below that warehouse,

1 you see the Number 3 "warehouse." Did ARTRA
2 purchase that warehouse?

3 A Yes.

4 Q Did ARTRA use that warehouse after the
5 purchase?

6 A Yes.

7 Q Did ARTRA make any substantial changes
8 to that building after the purchase?

9 A No.

10 Q Immediately below that Warehouse
11 Number 3 in relatively small print you see
12 "loading platform."

13 Did ARTRA purchase that loading
14 platform?

15 A Yes.

16 Q Did ARTRA use that loading platform
17 after the purchase?

18 A Yes.

19 Q Did ARTRA make any substantial
20 changes?

21 A No.

22 Q If you would go ahead and highlight
23 that as well.

24 Below Warehouse 3 and down to the

1 right somewhat is a Building Number 1 called
2 "office."

3 Did ARTRA purchase that office
4 building?

5 A Yes.

6 Q Did ARTRA use that office building
7 after the purchase?

8 A Yes.

9 Q Did ARTRA make any substantial changes
10 to the office building?

11 A No.

12 Q If you would go ahead and highlight
13 that, please.

14 Immediately to the right of the
15 office is Building 2A "storage."

16 Did ARTRA purchase that storage
17 building?

18 A Yes.

19 Q Did ARTRA use that storage building?

20 A Yes.

21 Q Did ARTRA make any substantial changes
22 to that storage building?

23 A No.

24 Q If you would go ahead and highlight

1 that.

2 I notice in the description of
3 the storage building at the bottom it refers to a
4 "10,000-gallon tank."

5 Did ARTRA purchase that
6 10,000-gallon tank?

7 A Yes.

8 Q Did ARTRA use that 10,000-gallon tank
9 after the purchase?

10 A I don't know.

11 Q Who would know that?

12 A Terry Lay or Dick Jarvis.

13 Q To your knowledge, did ARTRA make any
14 changes to that storage tank?

15 A No.

16 Q If you would highlight that as well.

17 Immediately above Building 2A is
18 Building Number 4, "paint plant."

19 Did ARTRA purchase the paint
20 plant?

21 A Yes.

22 Q Did ARTRA use the paint plant after
23 the purchase?

24 A Yes.

1 Q Did ARTRA make any substantial changes
2 to the paint plant after the purchase?

3 A No.

4 Q If you would highlight that building,
5 please.

6 Immediately above the paint plant
7 is Building Number 8, "maintenance shop."

8 Did ARTRA purchase the
9 maintenance shop?

10 A Yes.

11 Q Did ARTRA use the maintenance shop
12 after the purchase?

13 A Yes.

14 Q Did ARTRA make any substantial changes
15 to the maintenance shop?

16 A No.

17 Q Would you highlight that, please.

18 To the left of the maintenance
19 shop is Building Number 9. It appears to be
20 described as the "carpenters shop."

21 Is that an accurate description
22 of Building 9?

23 A Yes.

24 Q Did ARTRA purchase Building 9?

1 A Yes.

2 Q Did ARTRA use Building 9 after the
3 purchase?

4 A Yes.

5 Q Did ARTRA make any substantial changes
6 to that Building Number 9?

7 A No.

8 Q If you would highlight that in yellow.

9 Immediately above Building Number 9
10 there's a description for "linseed oil tanks" and
11 "Building 12"?

12 A Yes.

13 Q Did ARTRA purchase those tanks and
14 Building 12?

15 A Yes.

16 Q Did ARTRA use those tanks and Building 12
17 after the purchase?

18 A Yes.

19 Q Did ARTRA make any changes to those
20 tanks or the building after the purchase?

21 A No.

22 Q If you would highlight that in yellow.

23 Immediately below Building
24 Number 12 and those linseed oil tanks is Building

1 Number 11.

2 Do you recall what the description
3 of that building was?

4 A I don't recall that.

5 Q But --

6 A "Steel truss," it says.

7 Q Well, it says "concrete platform,
8 steel truss." But in any event, whatever that
9 building was, it was purchased by ARTRA, I take
10 it?

11 A Yes.

12 Q And ARTRA used that building after the
13 purchase?

14 A Yes.

15 Q Do you recall any substantial changes
16 that ARTRA made to that building after the
17 purchase?

18 A No.

19 Q If you would highlight that, please.

20 Immediately below that Building 11,
21 there's a reference to "linseed oil storage."

22 Do you see that?

23 A Yes.

24 Q Do you recall the sort of storage that

1 A No.

2 Q If you would highlight that, please.

3 Immediately above the reference
4 to "pipe tunnel," there's a Building Number 13.
5 Do you see that?

6 A Yes.

7 Q Did ARTRA purchase Building Number 13?

8 A Yes.

9 Q What was that used for; do you recall?

10 A I don't know.

11 Q Do you recall whether ARTRA made any
12 substantial changes to Building 13 after that
13 purchase?

14 A No.

15 Q If you would highlight that, please.

16 Building 21 is found just to the
17 right of Building 13 and it refers to
18 "miscellaneous storage."

19 Do you recall that building?

20 A Yes.

21 Q Did ARTRA purchase that building from
22 NL?

23 A Yes.

24 Q Did ARTRA use that building after the

1 purchase?

2 A Yes.

3 Q Did ARTRA make any substantial changes
4 to that building after the purchase?

5 A No.

6 Q Immediately to the right of Building 21
7 there's a reference to "buried tanks."

8 Do you see that?

9 A Yes.

10 Q And I take it those buried tanks
11 expand the three or so inches that are described
12 on the map here?

13 A Yes.

14 Q Let me ask a better question. The
15 tanks depicted in this exhibit cover the entire
16 area depicted by the three-or-so-inch area,
17 correct?

18 A Could you repeat that?

19 Q Yes, I can. The exhibit describes
20 "buried drums."

21 A "Tanks."

22 Q "Buried" -- Strike that.

23 The exhibit describes an area
24 called "buried drums" that on the map appears to

- 1 A Yes.
- 2 Q Did ARTRA use that tank for purposes
3 of storage of raw oil?
- 4 A Yes.
- 5 Q And do you happen to know what the
6 tank was that was on the right side of that
7 series of tanks?
- 8 A I don't.
- 9 Q That says "34,000 gallons"?
- 10 A Right.
- 11 Q Immediately below that series of
12 buried tanks, there's another reference to buried
13 tanks.
- 14 Do you see that?
- 15 A Yes.
- 16 Q Did ARTRA purchase those tanks from NL?
- 17 A Yes.
- 18 Q Were there four tanks in that location?
- 19 A I don't know how many there were.
- 20 Q Does this exhibit appear to indicate
21 there were four there?
- 22 A Yes.
- 23 Q Do you know what those were used for?
- 24 A I don't know what they were used for.

1 Q But ARTRA used those after the
2 purchase?

3 A Yes.

4 Q Did ARTRA make any substantial changes
5 to those buried tanks after the purchase?

6 A No.

7 Q If you would go ahead and highlight
8 those, please.

9 Going to the left there's a
10 reference to "two buried tanks"?

11 A Yes.

12 MR. HANEY: "Tanks."

13 MR. OSLAN: I've got this drum thing today.

14 MR. HANEY: Yes.

15 BY MR. OSLAN:

16 Q There's a reference to two buried
17 tanks, one 10,000 for fuel oil and one 10,000 for
18 mineral spirits.

19 Do you see that?

20 A Yes.

21 Q Did ARTRA purchase those tanks?

22 A Yes.

23 Q Did ARTRA use those tanks after the
24 closing?

1 Q Do you recall whether ARTRA made any
2 substantial changes to that building?

3 A No.

4 Q If you would highlight that in yellow.

5 I believe the final building is
6 Building Number 5. It's the largest building.
7 You indicated earlier ARTRA did purchase Building
8 Number 5 from NL; is that correct?

9 A Yes, that's correct.

10 Q And ARTRA used that building after the
11 purchase?

12 A I'm not -- I'm not sure of that.
13 I don't think we ever used that part of the
14 building.

15 Q For any purpose or --

16 A I don't think so.

17 Q But you said that Mr. Lay or
18 Mr. Jarvis would be able to answer that
19 specifically?

20 A Right.

21 Q Do you know whether ARTRA made any
22 substantial changes to that building after the
23 purchase?

24 A No.

1 Q No, they did not?

2 A No, they did not.

3 Q In you would highlight Building Number 5.

4 Are there any other features or
5 structures on this exhibit that were purchased by
6 ARTRA that you can see?

7 A 16.

8 Q Oh. What was Building 16?

9 A I don't know. It says "watch number."

10 Q "Watch house" maybe?

11 A "Watch house" maybe.

12 Q ARTRA purchased that --

13 A Yes.

14 Q -- and used it after the closing?

15 A Yes.

16 Q If you would highlight that.

17 So to summarize the area that you
18 have now highlighted in yellow are all of the
19 areas that were purchased by ARTRA and used by
20 ARTRA after the purchase of the Dutch Boy site by
21 NL.

22 MR. HANEY: With the exception of Building 5.

23 THE WITNESS: 5.

24 MR. OSLAN: With the exception of Building 5.

1 BY MR. OSLAN:

2 Q Let me ask the question again just so
3 we have a clear question. With the exception of
4 Building 5 that you were unclear about, the
5 highlighted areas on the map describe the areas
6 and buildings that were purchased by ARTRA and
7 used by ARTRA after the closing, correct?

8 A Correct.

9 Q And with respect to Building 5, you
10 can testify that ARTRA did, in fact, purchase
11 that building, correct?

12 A Yes, correct.

13 Q You were unclear as to whether they
14 used the building or not after the purchase?

15 A Correct.

16 MR. OSLAN: Why don't we take a five-minute
17 break.

18 (Recess.)

19 BY MR. OSLAN:

20 Q Mr. Conroy, I now want to focus on the
21 operations conducted by ARTRA at the Dutch Boy
22 site in Chicago. You indicated earlier that for
23 the most part, ARTRA purchased the business to
24 continue to operate it as a paint plant, correct?

1 correct?

2 A Right.

3 Q Do you know whether ARTRA ever
4 installed any new pollution control equipment at
5 the site after it purchased the site from NL?

6 A They put in some dust collection
7 systems over some of the dry powder operations.

8 Q Do you know which buildings those were
9 installed in?

10 A That was in -- that would have been in
11 Building 4.

12 Q Other than the installation of
13 additional dust collection equipment in Building 4,
14 were there any other additions to the pollution
15 control equipment at the site?

16 A Not that I -- not that I'm aware of.

17 Q Why did ARTRA decide to close down the
18 Dutch Boy plant in Chicago?

19 A We sold the paint division and that was
20 part of it.

21 Q When you say you sold the paint
22 division, what did that involve?

23 A Baltimore Paint and Chemical and Dutch
24 Boy Paints.

1 Q Who purchased Baltimore Paint and
2 Dutch Boy Paints?

3 A The Sherwin-Williams Company.

4 Q Did Sherwin-Williams buy any of the
5 assets that were formerly located or located at
6 the Dutch Boy site in 1980?

7 A Yes.

8 Q Which assets did they purchase?

9 A They purchased some of the raw
10 materials, and I think they purchased some of the
11 finished goods or they purchased all of the
12 finished goods, I think.

13 Q Did Sherwin-Williams purchase any of
14 the equipment in Chicago?

15 A Yes, they did. They purchased some of
16 the equipment also.

17 Q Why did ARTRA decide to sell the
18 business to Sherwin-Williams?

19 A I don't know that.

20 Q Do you know whether the plant was
21 profitable in 1980?

22 A By plant I wouldn't know that, no.

23 Q Was it company-wide?

24 A Was --

1 Q Was the Dutch Boy division profitable
2 on a company-wide basis in 1980?

3 A I think so.

4 Q What year did Sherwin-Williams
5 purchase the business in Chicago?

6 A It was either late '79 or early '80.

7 Q As part of that agreement, did
8 Sherwin-Williams agree to take on any
9 responsibility for the closing of the plant?

10 A No.

11 MR. OSLAN: Bob, have you got a copy of
12 that? Can we get a copy of that agreement?
13 I don't think we've seen it.

14 MR. HANEY: I didn't bring it. I'll be
15 happy to look if you'd send me a formal request.
16 I'll never remember otherwise.

17 MR. OSLAN: Can I just send you a letter?

18 MR. HANEY: Fine.

19 BY MR. OSLAN:

20 Q So in late 1979 or early 1980,
21 Sherwin-Williams buys the business, and was it
22 also at that time that Sherwin-Williams acquired
23 some of the inventories and raw materials?

24 A Yes.

1 Q Do you have in your mind a date by
2 which Sherwin-Williams completed its acquisition
3 of whatever it was acquiring from Dutch Boy
4 Chicago?

5 A No, I don't know -- I don't know what
6 specific date that would be.

7 Q Do you believe it occurred prior to,
8 let's say, the end of 1981?

9 A Oh, yes.

10 Q Do you think it occurred prior to the
11 end of 1980?

12 A Yes.

13 Q Do you recall whether Sherwin-Williams
14 purchased any of the products or equipment that
15 were contained in Building 5?

16 A As far as I know, they did not.

17 Q After the purchase of the Dutch Boy
18 business by Sherwin-Williams, what was occurring
19 at the Dutch Boy plant in Chicago?

20 A We were closing it down.

21 Q So once Sherwin-Williams completed
22 their purchase, the facility was no longer
23 manufacturing paint; is that correct?

24 A Correct.

1 was found in that area?

2 A Yes.

3 Q Did ARTRA store linseed oil in that
4 area after the purchase?

5 A Yes.

6 Q Was it above-ground or below-ground
7 storage tanks?

8 A I think it was above-ground.

9 Q Did ARTRA make any changes to that
10 above-ground storage tank for linseed oil after
11 the purchase?

12 A No.

13 Q If you would highlight that, please.

14 Above Building 9 there's a
15 reference to "18," which appears to be a stack,
16 165 feet high.

17 Do you recall that stack?

18 A No, I don't recall that, no.

19 Q Do you know whether that stack was
20 still present at the site when ARTRA purchased
21 it?

22 A I don't know.

23 Q So you can't say whether ARTRA used
24 that or not?

1 A No, I don't know.

2 Q Going up on the plan to Building
3 Number 14, it says "print shop."

4 Did ARTRA purchase that building
5 from NL?

6 A Yes.

7 Q Did ARTRA use that building after the
8 purchase?

9 A Yes.

10 Q Did ARTRA make any substantial changes
11 to that building after the purchase?

12 A No.

13 Q If you would highlight that, please.

14 Immediately to the right on this
15 exhibit, it refers to "pipe tunnel."

16 Do you recall that?

17 A Yes.

18 Q What was the purpose of the pipe
19 tunnel?

20 A I think for heating.

21 Q Did ARTRA use that pipe tunnel?

22 A Well, yes, to heat it, sure.

23 Q Did ARTRA make any changes to the pipe
24 tunnel?

1 A Some pots. And a long cylinder item.

2 Q Other than the pots and the long
3 cylinder item, do you recall any other equipment
4 that was left in Building 5 at the time that
5 ARTRA closed the plant?

6 A No.

7 Q Do you believe as you're sitting here
8 that that is the only equipment that was left in
9 the plant?

10 A Yes.

11 Q Did ARTRA contact NL prior to
12 determining that it was going to close the plant?

13 A I don't know that.

14 Q Do you have reason to believe that
15 prior to closing the plant, ARTRA contacted NL to
16 discuss that with them?

17 A I don't know that because that would
18 have been something I wouldn't have done.

19 Q Who would have been involved, if
20 anyone, in contacting NL?

21 A Probably an attorney. I don't know.

22 Q Would Mr. Harvey, either Mr. Harvey
23 have been involved in such a discussion if there
24 was one?

1 A Yes.

2 Q Do you know whether ARTRA tried to
3 sell that equipment?

4 A I don't know that.

5 (ARTRA Deposition Exhibit
6 No. 4 marked as requested.)

7 BY MR. OSLAN:

8 Q Mr. Conroy, you've been handed
9 what's --

10 MR. HANEY: Let me see it first.

11 BY MR. OSLAN:

12 Q -- marked as Exhibit 4.

13 Have you had an opportunity to
14 review that letter?

15 A Okay.

16 Q This document is a letter from Belson
17 Scrap and Steel, Inc. of Kankakee, Illinois to
18 James W. Schultz, the assistant treasurer of
19 Dutch Boy, Inc. dated October 20, 1980.

20 Mr. Schultz is someone who was
21 employed by ARTRA at the time?

22 A Yes.

23 Q Someone that was involved in the
24 closing of the plant?

1 A Yes.

2 Q Did you personally have any contact
3 with Belson Scrap and Steel?

4 A No.

5 Q Have you seen this letter before?

6 A I don't recall seeing it, no.

7 Q The letter confirms a telephone
8 conversation between Mr. Anthony Treadwell of
9 Belson Scrap and Steel and Mr. Schultz; is that
10 correct?

11 A That's correct.

12 Q And it confirms that Belson Scrap and
13 Steel is agreeing to pay \$4500 for certain
14 equipment in the building that contained the
15 former lead oxide business of NL, correct?

16 A Correct.

17 Q The items include 24 copper kettles on
18 the fifth floor of Building 5-2.

19 Do you believe that Belson Scrap
20 and Steel was agreeing to purchase this equipment
21 and that this equipment was formerly part of the
22 NL lead oxide business?

23 A Yes.

24 Q Do you know specifically what "24

1 copper kettles" refers to?

2 A No.

3 Q That's why I asked you earlier if you
4 thought that "pots" and "kettles" might be used
5 interchangeably in this context.

6 Do you think they may have been
7 referring to these pots that you referred to
8 earlier?

9 A No.

10 Q Paragraph 2 talks about two lead-lined
11 tanks on the second floor of Building 5-2. Are
12 you familiar with the equipment that is being
13 referred to here?

14 A No, I don't know what that would mean.

15 Q Did ARTRA use lead-lined tanks in its
16 business at the site, to your knowledge?

17 A I don't think we did, no.

18 Q So it would be your understanding that
19 Belson Scrap and Steel¹ is purchasing equipment
20 that was formerly part of the NL lead oxide
21 business?

22 A Yes.

23 Q Skipping down to paragraph 4, the
24 letter confirms that Belson Scrap and Steel is

1 purchasing scrap metal located in Buildings 5-1,
2 5-2, and 5-3 unless specifically excluded,
3 correct?

4 A Yes.

5 Q Do you know what scrap metal is being
6 referred to in this letter?

7 A No.

8 Q Was there a considerable amount of
9 scrap metal in that Building 5 at the time the
10 plant was closed down?

11 A Yes.

12 Q Did scrap metal include equipment that
13 was formerly used in the lead oxide business?

14 A Yes.

15 Q So it would be your understanding that
16 Belson Scrap and Steel was agreeing to purchase
17 as scrap equipment that was formerly used by NL
18 in the lead oxide business, correct?

19 A Yes.

20 Q Is it your understanding then that
21 ARTRA was receiving \$4500 for the sale of
22 equipment that was formerly used by NL in the
23 lead oxide business at the plant?

24 A Yes.

1 MR. HANEY: Off the record.

2 (Discussion off the record.)

3 (ARTRA Deposition Exhibit

4 No. 5 marked as requested.)

5 BY MR. OSLAN:

6 Q Mr. Conroy, you've been handed what's
7 been marked as ARTRA Exhibit Number 5. Why don't
8 you take a minute or two to review that.

9 Before we get into any specifics
10 about this document, I want to ask you a few
11 questions about the closing of the plant.

12 Was it ARTRA's intention at the
13 time it closed the plant to remove from the
14 premises all equipment?

15 A Yes.

16 Q Was it ARTRA's intention at the time
17 it closed the plant to gain from it as much value
18 as it could in terms of the sale of scrap and
19 equipment and whatever remaining inventories
20 existed there?

21 A It was ARTRA's intention to clean out
22 the facility and use vendors that are responsible
23 vendors and leave the facility as clean as
24 possible.

1 Q And as part of that process, I assume
2 that the sale of scrap, sale of used equipment,
3 the sale of product that was on hand was an
4 effort to, on the one hand, get everything off-site
5 and, on the other hand, to gain everything from the
6 property as much as it would provide?

7 A Well, we sold it because if somebody's
8 willing to buy, they're going to take care of it
9 the way that you want them to. But also to help
10 defray costs of doing it.

11 Q Now, referring to Exhibit 5, this is
12 an agreement between A-1 Chemical Equipment and
13 Dutch Boy/ARTRA, correct?

14 A Yes.

15 Q And this was an agreement that was
16 entered into on December 3, 1980 as part of
17 ARTRA's effort to close the plant, correct?

18 A Correct.

19 Q Is it your understanding that A-1
20 Chemical Equipment Company was buying essentially
21 all equipment, all assets, all scrap at the site
22 with the exception of certain assets that were
23 specifically itemized?

24 A That's what it says.

1 Q And do you have any reason to disagree
2 with this document?

3 A No.

4 Q In the second paragraph of the
5 agreement it says, "Buyer desires to purchase
6 from seller and seller desires to sell to buyer
7 the assets of seller's Carter plant."

8 Does that suggest that, in fact,
9 this company, A-1 Chemical Equipment was buying
10 from Dutch Boy the assets at the Dutch Boy site?

11 A Yes.

12 Q In Section 1 it describes the assets
13 to be conveyed and it says in effect at the
14 closing "Buyer will then and there purchase from
15 seller the following assets: all production
16 equipment, laboratory equipment and tables, all
17 office furniture, vats and remaining office
18 machines. Excluded from the sale of the assets
19 are the items listed on the attached exhibit, and:

20 "All the raw materials and
21 supplies, all drums of any size or materials
22 (empty or filled), fire extinguishers, hospital
23 stretchers, leased equipment, generally
24 consisting of lift trucks and material handling

1 equipment including battery chargers, real
2 estate, and improvements;

3 "Any and all patents, patent
4 rights, trademarks, and trade names employed by
5 the seller;

6 "All trade secrets, knowhow,
7 technology and other similar intangible rights
8 and property of seller;

9 "Copies or originals of all
10 books, records and other documents relating to
11 the assets including, but not limited to, lists
12 of suppliers and customers of the seller and the
13 correspondence and records of dealings with
14 actual and potential suppliers and customers of
15 the seller."

16 Does this Section 1 confirm in
17 your mind that A-1 Chemical Equipment was buying
18 all of the physical equipment remaining at the
19 site in December 1980 with the exception of those
20 listed in the exhibit which we'll get to in a
21 minute?

22 A Yes, in subparagraph (a), (b),
23 and --

24 Q And I take it that those were assets;

1 (a), (b), (c), and (d) were assets that ARTRA
2 wished to maintain for itself, correct?

3 A Well, (b) is -- was part of buy/sell
4 agreement.

5 Q With Sherwin-Williams?

6 A With Sherwin-Williams.

7 Q So you had no choice but to retain
8 that?

9 A Right. (C), same way. (D), yes, that
10 would be records that we would keep or, you know,
11 they would have no need for those records.

12 Q Would you agree that Section 1 and
13 paragraphs (a), (b), (c), and (d) in the exhibit
14 essentially cover everything that was left at
15 this plant relating to the former Dutch Boy
16 operation?

17 A Yes.

18 Q I want to look at the exhibit that
19 describes the additional items of personal
20 property excluded from the assets described in
21 Section 1. Have you got that?

22 A Yes.

23 Q These assets were assets that ARTRA
24 elected to keep for itself, correct?

1 A Correct.

2 Q And these are assets that were not
3 sold to A-1, correct?

4 A Correct.

5 Q And if you review the items excluded
6 on this exhibit, there is no exclusion for items
7 contained in Building 5, correct?

8 A Correct.

9 Q There's no exclusion for items
10 relating to the former lead oxide business,
11 correct?

12 A Correct.

13 Q And there's no exclusion for any of
14 the other materials that NL or ARTRA may have
15 left in Building 5, correct?

16 A Correct.

17 Q So would you agree that under this
18 agreement, A-1 was agreeing to purchase the
19 equipment in Building Number 5?

20 A Correct.

21 Q Was it ARTRA's understanding at the
22 time it closed the plant that A-1 Chemical
23 Equipment Company was buying all of the equipment
24 and materials in Building 5?

1 (ARTRA Deposition Exhibit
2 No. 6 marked as requested.)

3 BY MR. OSLAN:

4 Q Mr. Conroy, you've been handed what's
5 been marked as ARTRA Exhibit Number 6, which
6 is an appraisal of the real estate located at
7 12042 South Peoria Street in Chicago. Is that
8 the former Dutch Boy property?

9 A Yes.

10 Q It's dated 1980; is that correct?

11 A Yes.

12 Q Have you seen this appraisal before?

13 A Yes.

14 Q Was this an appraisal that was
15 performed by The Manufacturers' Appraisal Company
16 on behalf of ARTRA?

17 A Yes.

18 Q Does this appraisal reflect the
19 appraiser's opinions and observations with
20 respect to the property as of December 31, 1980?

21 A Yes.

22 Q Why don't you take a minute to review
23 the report and I'll ask you just a few questions
24 about it.

1 A Okay.

2 Q Does the appraiser's report accurately
3 summarize the buildings and structures at the
4 site at the end of 1980?

5 A I would have to review the report in
6 more detail. I assume yes. Yes.

7 Q But generally, it describes the
8 appropriate number of structures and describes
9 that those structures are standing; is that
10 right?

11 A Yes.

12 Q At the back of the report there are a
13 series of photographs.

14 You have seen these photographs
15 before?

16 A Yes.

17 Q The first photograph shows Buildings 1
18 and 2A. At least that's the indication; is that
19 right?

20 A That's right.

21 Q Based on your observations at the
22 plant, is that a true and correct depiction of
23 Buildings Number 1 and Number 2A?

24 A Yes.

1 Q Is that the condition roughly of the
2 Buildings 1 and 2A at the time that ARTRA closed
3 the plant?

4 A Yes.

5 Q The second photo is described as
6 Building 10A. Are you familiar with that
7 building?

8 A Yes.

9 Q Does that photograph appear as a true
10 and correct depiction of Building 10A at the time
11 that ARTRA sold the plant?

12 A Yes.

13 Q Is that the condition of the building
14 at the time that ARTRA closed the plant?

15 A Yes.

16 Q Do these photographs depict these
17 structures in the condition that they were when
18 NL sold the business to ARTRA in 1976?

19 A Yes.

20 Q The next photograph is described as
21 Building 14. Are you familiar with Building 14?

22 A Yes.

23 Q Does that photograph accurately depict
24 Building Number 14?

1 A Yes.

2 Q Is that the condition of Building 14
3 at the time that ARTRA closed the plant?

4 A Yes.

5 Q Is that the condition or does that
6 depict the condition of Building 14 at the time
7 that NL sold the business to ARTRA?

8 A Yes.

9 Q Next photograph shows Buildings 10A,
10 11, and 12. Are you familiar with those
11 buildings?

12 A 10A, 11, and 12. That photograph only
13 shows Building 10 -- 10A.

14 Q See the building in the background?

15 A It's possible. Yes, yes.

16 Q Having reviewed those photographs, do
17 you believe that they truly and accurately depict
18 Buildings 10A, 11, and 12?

19 A Yes.

20 Q Does that photograph depict those
21 buildings at the time that ARTRA closed the
22 plant?

23 A Yes.

24 Q Does that photograph depict the

1 condition of those buildings at the time that NL
2 sold the plant to ARTRA?

3 A Yes.

4 Q The next photograph depicts Buildings
5 Number 5 and 7. Are you familiar with those
6 buildings?

7 A Yes.

8 Q Does that photograph accurately depict
9 those buildings at the time that ARTRA closed the
10 plant?

11 A Yes.

12 Q Does that photograph depict the
13 condition of the buildings at the time that NL
14 sold the plant to ARTRA?

15 A Yes.

16 Q That's all I have on that.

17 Why don't we go off for a
18 second.

19 (Discussion off the record.)

20 (Whereupon, at 12:00 noon,
21 the deposition was recessed,
22 to reconvene at 1:00 p.m.
23 this same date.)
24

1 AFTERNOON SESSION

2 (1:00 p.m.)

3 (ARTRA Deposition Exhibit

4 No. 7 marked as requested.)

5 JOHN PETER CONROY,

6 the witness at the time of recess, having been
7 previously duly sworn, was further examined and
8 testified as follows:

9 EXAMINATION

10 BY MR. OSLAN:

11 Q Mr. Conroy, I have in my hand Exhibit
12 Number 7, which is an appraisal that was done at
13 the time of the NL Industries sale of the Dutch
14 Boy plant to ARTRA in 1976.

15 On page 68 there are two
16 photographs. The top photograph suggests that it
17 is the view looking north along Peoria Street at
18 Building 1, Building 2, and Building 2A.

19 Are you familiar with those
20 buildings?

21 A Yes.

22 Q Does that photograph accurately depict
23 those buildings as they existed in 1976?

24 A Yes.

1 Q Is that the condition of the Building 1,
2 2, and 2A, at the time that NL sold the business
3 to ARTRA in 1976?

4 A Yes.

5 Q The second photo on page 68 is
6 described as a view looking northwest from Peoria
7 Street at Building 10 on the left and Building 3
8 on the right.

9 Are you familiar with those
10 buildings?

11 A Yes.

12 Q Does this photograph accurately depict
13 those buildings as they existed in 1976?

14 A Yes.

15 Q Does that photograph depict the
16 condition of those buildings at the time NL sold
17 the Dutch Boy plant to ARTRA in 1976?

18 A Yes.

19 Q Page 69, first photograph is described
20 as a view looking northwest at Building 3 on the
21 left, Building 4 in the center, Building 2 on the
22 right center, and Building 1 on the right.

23 Are you familiar with those
24 buildings?

1 A Yes.

2 Q Does that photograph accurately depict
3 those buildings as they existed in 1976?

4 A Yes.

5 Q Is that the condition of the buildings
6 at the time that NL transferred this site to
7 ARTRA in 1976?

8 A Yes.

9 Q The second photograph on page 69 is a
10 view looking north at Building 6 and 7 with
11 Building 5 in the background.

12 Are you familiar with those
13 buildings?

14 A Yes.

15 Q Does that photograph accurately depict
16 those buildings as they existed in 1976?

17 A Yes.

18 Q Does the photograph depict the
19 condition of the buildings at the time that NL
20 sold the Dutch Boy plant to ARTRA in 1976?

21 A Yes.

22 Q Page 70, first photograph is a view
23 looking northwest, Building 14 on the left and
24 Building 21 on the right.

1 Are you familiar with those
2 buildings?

3 A Yes.

4 Q Does this photograph accurately depict
5 the condition of those buildings in 1976?

6 A Yes.

7 Q Does the photograph depict the
8 condition of the buildings at the time that NL
9 sold the Dutch Boy plant to ARTRA in 1976?

10 A Yes.

11 Q The second photograph on page 70 is
12 described as looking west along 120th Street,
13 Building 5, Section 2 - center.

14 Are you familiar with that
15 building?

16 A Yes.

17 Q Does this photograph accurately depict
18 Building 5, Section 2?

19 A Yes.

20 Q Does this photograph depict the
21 condition of Building 5, Section 2 at the time
22 that NL sold Dutch Boy to ARTRA in 1976?

23 A Yes.

24 Q The final photograph is described as

1 looking southwest along Peoria Street, Building 5
2 on the right, Building 2 on the left.

3 Are you familiar with those
4 buildings?

5 A Yes.

6 Q Does this photograph accurately depict
7 those buildings in 1976?

8 A Yes.

9 Q Does this photograph depict the
10 condition of those buildings at the time that NL
11 sold the Dutch Boy plant to ARTRA in 1976?

12 A Yes.

13 Q Earlier, I think you mentioned that
14 after NL sold the Dutch Boy plant to ARTRA, NL
15 continued some operations at the site; is that
16 correct?

17 A Correct.

18 Q Were the operations that NL continued
19 at the site after the sale to ARTRA conducted in
20 Building 5?

21 A Yes.

22 Q To your knowledge, did NL conduct any
23 operations at the site after the sale to ARTRA in
24 any building other than --

1 A No.

2 Q -- Building 5?

3 A No.

4 Q When did NL's operations at that site
5 cease?

6 A Approximately -- well, it was around
7 the end of 1977.

8 Q Around the end of 1977. Did NL
9 conduct any operations at the site whatsoever
10 after the end of 1977?

11 A No.

12 Q Did NL have any involvement whatsoever
13 with the site after the end of 1977?

14 A No.

15 Q Is it your understanding that the
16 City's claim in this action is that the site that
17 was formerly used by NL and ARTRA as the Dutch
18 Boy site now constitutes the nuisance?

19 A Yes.

20 Q Is it ARTRA's position that if a
21 nuisance exists at the site, that that nuisance
22 arose sometime after 1981?

23 A Yes.

24 Q Did ARTRA have anything to do with the

1 site after 1981?

2 A No.

3 Q Did NL have anything to do with the
4 site after 1981?

5 A No.

6 Q Are you aware of any condition that
7 existed on the property at the time ARTRA left it
8 that caused or contributed to a nuisance?

9 A No.

10 Q When ARTRA closed the plant, it
11 donated the property to Goodwill Industries;
12 is that correct?

13 A Correct.

14 Q Can you tell us why ARTRA elected to
15 do that?

16 A Originally ARTRA tried to sell the
17 plant, and it didn't sell, and a contact was made
18 by Goodwill to ARTRA -- an employee of ARTRA that
19 Goodwill takes these properties and they sell
20 them off and then Goodwill gets the proceeds.
21 And so that that started the process.

22 Q Since ARTRA was having difficulty
23 selling the property, I take it that they were
24 suffering some cost, sort of operating cost at

1 the site that they did not want to incur?

2 A Well, yes. There's a cost to having
3 an empty plant. Sure there is, yes.

4 Q And because they were incurring costs
5 at the site and they had no use for the site,
6 they decided to donate it, right?

7 A Well, Goodwill represented that they
8 could -- they had some uses for the property, and
9 ARTRA could donate it to Goodwill. Goodwill
10 could turn around and sell it. We would be -- we
11 would be removed from having an empty facility,
12 and they would get some benefit from somebody
13 buying from them so it was a natural transaction.

14 Q Do you know whether the Goodwill
15 representatives inspected the site prior to the
16 donation by ARTRA to Goodwill?

17 A As far as I know, they did.

18 Q Do you know whether Goodwill had any
19 concerns about the condition of the property
20 prior to the donation?

21 A They didn't express any. They said
22 that they had some people who were interested in
23 the site.

24 Q And do you believe that if Goodwill

1 Q Do you know when that was closed?

2 A In mid -- midyear of 1979 -- 1980.

3 Q When you say "midyear," are we talking
4 about the time of this memo, which is Exhibit 16,
5 I believe?

6 A It would be a little bit after that.

7 Q Sometime around July, maybe August?

8 A August of '80.

9 Q I'd like to show you a several-page
10 memo. We'll mark this as Exhibit 17, I think.

11 (ARTRA Deposition Exhibit

12 No. 17 marked as requested.)

13 BY MR. PECK:

14 Q Go ahead and take a look at that,
15 please.

16 For the record, Exhibit 17 is a
17 four-page memo to P.R. Harvey from J.W. Schultz,
18 dated December 11th, 1980. It's Bates stamped
19 Numbers 1, 2, 3, and 4.

20 Have you ever seen this memo
21 before?

22 A Yes.

23 Q On the first page on the last
24 paragraph there's about four words scratched out

1 and then in handwriting "okay" or something like
2 that. It might be initials "PRH." It would be
3 Peter Harvey. To the best of your knowledge,
4 is that an accurate thing somebody did on 12-12,
5 I guess, 1980?

6 MR. HANEY: What's the question? Did
7 somebody scratch this out and put their initials?

8 BY MR. PECK:

9 Q I'm just asking you, is this an
10 accurate copy of the memo you've seen?

11 A I don't recall whether the memo I saw
12 had it scratched out or not.

13 Q Calling your attention to the
14 background information on the first page, the
15 plant has a value of \$627,000. To the best of
16 your knowledge, is that what officials at either
17 ARTRA or Dutch Boy considered the value of the
18 plant to be the beginning of December of 1980?

19 A I don't know how they arrived at that
20 number.

21 Q Now, the 1980 appraisal that we looked
22 at this morning appraised the plant at \$650,000.
23 Are you aware of that?

24 A I didn't recall it but --

1 Q Well, it's in Exhibit whatever, the
2 1980 appraisal. I can't recall the exhibit
3 number.

4 Paragraph number 4 in "background
5 information" says, "The plant had been listed with
6 Coldwell Banker since October 6th with an asking
7 price of \$700,000."

8 Do you have any knowledge of that
9 other than --

10 A Not other than this memo.

11 Q Also in paragraph 4 it says "It was
12 anticipated that the building would sell for
13 approximately 500,000 to 600,000."

14 Do you have any knowledge what
15 they mean by "building"?

16 A The site.

17 Q You mean the entire Dutch Boy Chicago
18 plant?

19 A Yes.

20 Q Earlier today you were asked questions
21 about what type of concerns Dutch Boy or ARTRA
22 had with keeping the abandoned plant -- I'm not
23 sure if that was the exact term you used -- but
24 after the facility -- before it had been sold,

1 but after the business had shut down. ARTRA had
2 concerns about the cost of keeping that plant
3 open.

4 MR. HANEY: I don't agree that that was his
5 testimony. But go ahead and ask the question.

6 BY MR. PECK:

7 Q Well, could you go ahead and sort of
8 recap your testimony about that? I don't want to
9 misstate your testimony.

10 A I mean, nobody wants an empty plant.
11 We had no use for the plant so our intention is
12 to sell the plant and get on with it, get on with
13 our business.

14 Q When you say "Nobody wants an empty
15 plant," do you know what the problems are with an
16 empty plant?

17 A Well, in this climate you still have
18 to heat them. Otherwise, all the pipe -- it's a
19 sprinkler facility. If you don't heat them, then
20 the sprinklers will freeze up and all the
21 plumbing will freeze up. Freezing is a problem.
22 That's a big problem.

23 Q Is that what this memo refers to in
24 the second line, "Steps have been taken to

1 completely winterize the building"? Is that what
2 "winterizing" means?

3 A Yes.

4 Q Any other concern other than
5 winterizing?

6 A Well, you're insuring a building.
7 You're spending money to insure something that
8 has no productive value to the company. It's
9 just another -- Why would we keep a plant that we
10 don't use, we don't have any use for?

11 Q Anything else other than winterizing
12 and insuring?

13 A Oh, everything. Sure, you have --
14 it's just another facility out there. Why
15 would -- there's no reason to have it so why
16 don't we sell it?

17 Q So you were trying to sell it?

18 A Yes.

19 Q Were you involved in discussions of
20 the disposition alternatives which this memo
21 summarizes?

22 A No.

23 Q Do you have any knowledge about the
24 disposition alternatives this memo summarizes?

1 A No.

2 Q Do you have any knowledge about the

3 tax advantages of the donation?

4 A No.

5 Q Do you know who would know?

6 A Jim Schultz would know.

7 Q Anyone other than Jim Schultz?

8 A No.

9 Q Would Peter Harvey know? His name is

10 Peter, isn't it?

11 A Peter, yes.

12 Q And he's the president of ARTRA?

13 A He wouldn't know. Perhaps the guy

14 from Goodwill would know.

15 Q But Peter Harvey wouldn't necessarily

16 know the tax specifics relating to this?

17 A No.

18 Q It says here "The plant has been

19 listed since October 6th." Do you understand

20 that to be synonymous with putting it on the

21 market?

22 A Yes.

23 Q Do you know how long the plant was

24 listed?

1 A I don't know that.

2 Q Do you know if Dutch Boy or ARTRA ever
3 received any offers?

4 A I don't know that.

5 Q Do you know who would know that?

6 A Jim Schultz.

7 Q Eventually Dutch Boy or ARTRA and
8 Goodwill got together on this building. Do you
9 know who brought the parties together?

10 A I don't know for certain, no.

11 Q Did you have any involvement in this?

12 A No.

13 Q Do you know who would know?

14 A I don't know that, no.

15 Q Do you know if ARTRA or Dutch Boy
16 approached Goodwill or vice versa?

17 A I don't know for certain, no.

18 Q Again, do you know who would know
19 that?

20 A No, I don't.

21 Q In this four-page memo to Peter
22 Harvey, "disposition alternatives," Disposition
23 Number 1, "donate to Goodwill," it talks about
24 tax deductions.

1 Strike that. I'll come back to
2 this memo later.

3 MR. HANEY: He's already indicated for the
4 record he doesn't have any knowledge of the
5 disposition alternatives or the tax consequences.

6 MR. PECK: But he also is a 206(a)(1).

7 MR. HANEY: He doesn't know. What's the
8 point of asking him.

9 MR. PECK: Well, he can always say "I don't
10 know."

11 Another document, this is a
12 multipage document. Again, mark that.

13 (ARTRA Deposition Exhibit
14 No. 18 marked as requested.)

15 BY MR. PECK:

16 Q ARTRA Exhibit Number 18 is a couple of
17 different documents. The title page is a letter
18 from Kwiatt and Silverman, Limited to James
19 Schultz, dated March 18th, regarding documents
20 pertaining to the gift to Goodwill Industries,
21 Bates Stamp Number 000069, "Charitable Donation
22 Agreement," Bates Stamp Numbers 63, 64, 65, 66,
23 67, and 68, "Supplemental Agreement to Charitable
24 Donation Agreement," Bates Stamp Number 60, 61, 62.

1 the Dutch Boy plant from NL, did ARTRA learn that
2 NL had failed to properly obtain a permit?

3 A No.

4 Q To your knowledge, was there ever any
5 violation at the Dutch Boy plant either under
6 ARTRA's watch or NL's watch resulting in a
7 failure to obtain a permit?

8 A Not that I'm aware of.

9 Q If I could ask you to turn your
10 attention to Exhibit 15, which is Mr. Lay's memo
11 to you regarding inspections that occurred during
12 1977 at the Chicago plant, you indicated that
13 this information was provided to you on your
14 request; is that right?

15 A That's correct.

16 Q Mr. Lay was gathering this information
17 and compiling this information for you as part of
18 his job at ARTRA; is that right?

19 A Correct.

20 Q And Mr. Lay had personal knowledge or
21 had gained knowledge regarding each one of these
22 inspections and was providing that information to
23 you?

24 A Correct.

1 Q Now, you testified earlier that by the
2 end of 1977, Dutch Boy had completed and closed
3 its lead oxide operation; is that right?

4 A Yes.

5 Q So these inspections either occurred
6 during the period that NL was operating the lead
7 oxide equipment or immediately after they closed
8 it down; is that right?

9 A Yes.

10 Q The second grouping of inspections
11 reveals that the Illinois EPA inspected the
12 facility in 1977; is that right?

13 A That's correct.

14 Q And Illinois EPA after its inspection
15 concluded that there were no violations at the
16 Dutch Boy site and that no citations were issued;
17 is that right?

18 A That's correct.

19 Q The City of Chicago also made numerous
20 inspections at the site during 1977; is that right?

21 A Yes.

22 Q The first inspection was made by the
23 Fire Prevention Bureau. Do you have any
24 familiarity with the Fire Prevention Bureau?

1 A No.

2 Q But it's fair to assume that they're
3 concerned with fires, combustible, flammable
4 materials?

5 A Reasonable guess.

6 Q And it shows here on the memorandum
7 that both on May 11th and June 5th that the City
8 of Chicago, Fire Prevention Bureau inspected the
9 Dutch Boy plant and found no violations; is that
10 correct?

11 A That's correct.

12 Q The Environmental Control Department
13 of the City of Chicago also made an inspection on
14 May 18th; is that right?

15 A That's right.

16 Q And no violations were found; is that
17 correct?

18 A That's correct.

19 Q Dropping down to the Department of
20 Industrial Hygiene of the City of Chicago, are
21 you familiar with that organization?

22 A No, but I'm familiar with the function.

23 Q Their function is to protect workers?

24 A Yes.

1 Q And they conducted an inspection of
2 the ventilation systems, and they concluded in
3 1977 that there were no violations; is that
4 right?

5 A That's correct.

6 Q And finally, the City of Chicago,
7 Building Department also conducted an inspection
8 of the buildings in 1977; is that correct?

9 A Correct.

10 Q And did the Building Department find
11 any violations with respect to any of the
12 buildings on the property in 1977?

13 A No.

14 Q To your knowledge, were there
15 inspections by these departments during 1977,
16 1978, 1979, and 1980?

17 A I don't know.

18 Q If violations were discovered by any
19 of these agencies during the 1978 to 1980 time
20 period, is that something that you would have
21 learned about?

22 A If it was a major violation, yes.

23 Q And you are not aware of any such
24 major violations?

1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

COPY

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

5 COUNTY DEPARTMENT - CHANCERY DIVISION

6 CITY OF CHICAGO,)

7 Plaintiff,)

8 vs.) No. 91 CH 4534

9 NL INDUSTRIES, INC., and)

10 ARTRA GROUP, INC.,)

11 Defendants.)

12

13 The discovery deposition of RICHARD
14 JARVIS, taken in the above-entitled cause before
15 NOREEN MORRIS, a Notary Public of Cook County,
16 Illinois, on the 28th day of July 1995, at
17 30 North LaSalle Street, Chicago, Illinois,
18 pursuant to Notice.

19

20

21

22

23 Reported by: Noreen Morris, CSR,

24 License No. 84-003546

1 salvage companies that you recall having purchased
2 equipment and scrap materials at the site, do you
3 know whether Dutch Boy sold any remaining equipment
4 and scrap metal to any scrap and steel scavenger
5 companies other than Belson?

6 A. No.

7 Q. But they may have done so, you just don't
8 know one way or the other; is that correct?

9 A. Correct.

10 Q. Okay. I have a fairly bulky document here
11 that was marked during John Conroy's deposition and
12 I'd like to avoid marking it again because it's so
13 bulky.

14 But if I may, I'll refer to it as
15 Artra Deposition Exhibit No. 7 which is how it was
16 marked in that deposition.

17 MR. PECK: That's fine with me.

18 BY MS. AHERN:

19 Q. I'd like to show you that document and
20 actually what I'd like to draw your attention to is
21 Page 68 through 71 of that document. I think the
22 page numbers are in the upper right-hand corner.

23 The first photo at the top, can you
24 describe what you see in that photo?

1 A. The office building.

2 Q. And that's Building No. 1 on our little

3 chart there?

4 A. Yes.

5 Q. And is that a fair and accurate

6 representation of what building No. 1 looked like

7 while you were employed at the former Dutch Boy

8 Paint plant site?

9 A. Yes.

10 Q. Looking at the second photo on that page, ✓

11 do you recognize what you see in that photo?

12 A. Yes.

13 Q. What do you see in that photo?

14 A. That's the new warehouse.

15 Q. That would be Building No. 10 on our chart

16 over here?

17 A. Correct.

18 Q. And on the left-hand side, there's a ✓

19 partial building that we see?

20 A. Left-hand side?

21 Q. I'm sorry, on the right-hand side, is that

22 building No. 3, the old warehouse?

23 A. Yes.

24 Q. Is this picture a fair and accurate

1 representation of how those buildings appeared
2 while you were employed at the former
3 Dutch Boy Paint plant site?

4 A. Yes.

5 Q. Moving on to Page 69, the top photo, do
6 you recognize what you see in that photo?

7 A. I see a little bit of the office.

8 Q. On the right-hand side?

9 A. Yes.

10 Q. So that would be Building No. 1 from our
11 chart?

12 A. Yes.

13 Q. What else do you see on that photo?

14 A. Am I supposed to read this?

15 Q. No. What do you recall?

16 A. That's the old warehouse, I think part of
17 it.

18 Q. That's the building that I refer to on the
19 chart as building No. 3, the old warehouse?

20 A. Yes, and the -- what, Dock 2A and the
21 paint plant.

22 Q. The paint plant we said was Building No. 4
23 as I recall?

24 A. The corner with some of 2.

1 Q. Is that a fair and accurate representation
2 of how these buildings appeared while you were
3 employed on the former Dutch Boy Paint plant site?
4 A. Yes.
5 Q. Let's move on to the bottom photo.
6 What do you see in that photo?
7 Do you recognize what you see in that
8 photo?
9 A. That's possibly the backyard kind of
10 boiler house area or maintenance, somewhere in the
11 area.
12 Q. Do you recognize the buildings you see in
13 that photo?
14 A. Yes.
15 Q. What are those buildings? You can
16 describe them by number or by function.
17 A. I believe they are maintenance boiler
18 house or storage, what I call the back part of the
19 plant.
20 Q. That's Buildings 6 and 7 as well as
21 Building 5 from our chart?
22 A. Oh, okay, at the far end, yes.
23 Q. Is that a fair and accurate representation
24 of how those buildings appeared when you were

1 employed at the former Dutch Boy Paint plant site?
2 A. Yes.
3 Q. Move on to Page 70.
4 Do you recognize the buildings in the top
5 photo?
6 A. Is that possibly the print shop and the
7 locker room?
8 Q. Do you recognize those buildings?
9 A. Yes.
10 Q. What are those buildings?
11 A. It looks like the print shop and the
12 locker room.
13 Q. Does this photo refresh your recollection
14 with regard to whether or not Building 21 was
15 standing on the site when you came to the site?
16 A. Yes.
17 Q. So was Building No. 21 present on the site
18 when you were employed there?
19 A. If the green one is 21.
20 Q. Which one are you referring to --
21 A. The little --
22 Q. Mine is in black and white?
23 A. I'm sorry. That would be that little shed
24 there with the wood in it earlier, if that's 21.

1 Q. Is there a portion of a building between
2 the green building which you think might be 21 and
3 Building 147
4 A. 13 you mean?
5 Q. Yeah. I'm trying to find out whether that
6 small building is between the larger building and
7 the green building?
8 A. Yes, there's something. That was there.
9 Q. Does that refresh your recollection with
10 regard to whether or not Building 13 was on the
11 site while you were employed on the site?
12 A. Yes, I believe so. I believe both of them
13 was there.
14 Q. Does this picture depict how you recall
15 the buildings appearing when you were employed on
16 the site?
17 A. Yes.
18 Q. Is this a fair and accurate representation
19 of those buildings during the time period you were
20 employed on the site?
21 A. Yes.
22 Q. Moving on to the bottom photo.
23 What is depicted in that photo?
24 A. The north side of the complete building, I

1 guess.

2 Q. Is that building No. 5?

3 A. Yes.

4 Q. And did Building No. 5 appear that way

5 while you were employed on the site?

6 A. Yes.

7 Q. Is that a fair and accurate depiction of

8 how that building appeared during that entire time

9 you were employed at the site?

10 A. Yes.

11 Q. One more photo, Page 71.

12 Do you recognize Photo 71?

13 A. Yes.

14 Q. What do you recognize in photo -- on

15 Page 71?

16 A. What do I recognize? Peoria Street.

17 Q. What is depicted in the photo, what

18 buildings?

19 A. Possibly Building 2 and 5.

20 Q. When you say possibly Buildings 2 and 5,

21 which is which?

22 A. Well, the -- to my right would be 5.

23 Q. The larger building?

24 A. Larger building.

1 Q. And then the smaller building to your left
2 would be Building No. 2?

3 A. Yes.

4 Q. Is this a fair and accurate depiction of
5 how these buildings appeared when you were on the
6 site?

7 A. Yes.

8 Q. The photos that we've looked at, were
9 there any changes in the appearances of those
10 buildings during the period of time that you were
11 on the site?

12 Did they resemble those photos during the
13 entire time you were employed at the former
14 Dutch Boy Paint plant site?

15 A. I don't understand what you mean by
16 changed. Okay. Were they painted or --

17 Q. When you first came to the site, did the
18 buildings appear as they are depicted in these
19 photos?

20 A. Yes.

21 Q. When you left the site, did the buildings
22 also appear as they are depicted in these photos?

23 A. Yes.

24 Q. One more document that was marked at the

1 Artra Conroy deposition and it was marked as
2 Exhibit No. 6. Unfortunately, I only have one copy
3 of this, and the photos are in black-and-white so
4 we'll see if we can make them out at all. Take a
5 look at that. I'm only interested in the
6 photographs in this picture -- or in this
7 document.

8 Just for the record so the record is
9 clear, the document that we just looked at, the
10 document that was previously marked as
11 Artra Deposition Exhibit No. 7 is a document, a
12 bound book entitled Appraisal of Dutch Boy Paint
13 Division of NL Industries, Various Locations, 1976.

14 The document that the witness is looking
15 at currently is a document that had been previously
16 marked Artra Exhibit No. 6 is also an appraisal
17 document and it was an appraisal that was conducted
18 by Dutch Boy Paint in 1980.

19 Do you recognize what you see in the
20 photos on that document?

21 A. Yes, the upper picture.

22 Q. Why don't you give the page number and
23 then start with the upper picture?

24 A. Page No. AR00925.

1 Q. What do you see in the top picture on that
2 page?

3 A. That's the office building, Building 1.

4 Q. I realize the photo quality is not very
5 good.

6 Is that a fair and accurate depiction of
7 how the building looked while you were employed at
8 the site?

9 A. Can we go off the record?

10 MS. AHERN: We can go off the record.

11 (Whereupon, a discussion was
12 had off the record.)

13 BY MS. AHERN:

14 Q. All right. We're looking at the 1980
15 appraisal document, an exhibit that's been marked
16 Exhibit No. 6 in a previous deposition,
17 Artra Conroy Deposition and we are looking at the
18 top photo on Page AR925. That's a Bates number
19 stamp for identification of the page.

20 Do you recognize what is depicted in the
21 top photo on that page?

22 A. Yes.

23 Q. What is depicted in the top photo on that
24 page?

1 A. The Office Building No. 1.
2 Q. Is there anything else in that photo that
3 you recognize?
4 A. A vehicle.
5 Q. You recognize the vehicle?
6 A. And a fence.
7 Q. Where is the fence located?
8 A. Southeast area of the property.
9 Q. Was the fence in existence on the property
10 while you were employed on the property?
11 A. Yes.
12 Q. Could you describe the fence?
13 A. It was a chain link fence. I'm not sure
14 of the height, 6 feet maybe. It was tall.
15 Q. Was there barbed wire on the fence?
16 A. Yes.
17 Q. Did the barred wire go entirely around the
18 property at the top of the fence?
19 A. Yes.
20 Q. Let's move on to the next photo, the
21 second photo on that page.
22 Do you recognize what you see in that
23 photo?
24 A. Yes.

1 Q. What do you see in that photo?
2 A. I believe that's the new warehouse,
3 Building 10.
4 Q. So you recognize the second photo, the
5 lower photo on that page as depicting the new
6 warehouse building; is that correct?
7 A. Right.
8 Q. Do you see anything else in that
9 photograph that you recognize?
10 A. The railroad spur and the -- what would
11 you call it, the connection between that building
12 and the old warehouse, 3.
13 Q. Is that an enclosed walkway?
14 A. Yes. There's a fence there.
15 Q. Okay. Can you describe the fence that you
16 just said exists in this photograph?
17 A. The fence was a chain link fence.
18 Q. Is that fence a continuation of the same
19 chain link fence that we saw on the first photo on
20 this page or is that a separate fence?
21 A. That's separate.
22 Q. Where was that separate fence located?
23 A. The one I'm looking at?
24 Q. The one that's in the lower photo on this

1 page?

2 A. It was to -- in the space between
3 Building 10 and 3.

4 Q. Do you know what the purpose of that fence
5 was?

6 A. Mainly for rail movement if there was
7 any. There was a railroad spur there, unused.

8 Q. The railroad spur was unused?

9 A. To my knowledge, yes.

10 Q. And it's your testimony that the fence was
11 there to restrict access based on the railroad?

12 A. Right.

13 Q. Okay. Let's move on to the next page. We
14 are looking at the top photo on Page AR00926.

15 Do you recognize what is depicted in the
16 top photo there? Again, I realize that the photo
17 quality is poor.

18 A. It looks like a railroad spur. I'm not
19 sure what building it is.

20 Q. You can't make the building out at all?
21 Without glancing at the caption, can you make out
22 what's depicted in the photo other than the
23 railroad --

24 A. It looks like the -- on the west side of

1 that spur should be the locker room, print shop.

2 Q. Can you make out anything with regard to
3 the condition of the building based on the
4 photograph?

5 A. That it's standing.

6 Q. But other than that, can you make out
7 anything else?

8 A. No, I can't.

9 Q. Let's move on to the next photo.

10 Do you recognize what's depicted in the
11 bottom photograph on that page?

12 A. I want to say the gray area is the
13 warehouse.

14 Q. You're pointing to the building that's on
15 the right-hand side of the photograph?

16 A. It's pretty hard but yeah. Then I see the
17 railroad spur. So this has to be -- I want to say
18 that's the back of where we made industrial
19 paints. I'm not sure what the building number is.

20 Q. Where did you make the industrial paints
21 referring to the diagram that we previously marked
22 as Jarvis Deposition Exhibit No. 1?

23 A. Floor 2, above Building 9.

24 Q. Okay. So it's your testimony that you

1 Do you recognize what's depicted in the
2 photograph on Page AR00929?

3 A. No.

4 Q. Okay. Are you aware of any condition at
5 the former Dutch Boy Paint plant site that existed
6 when you last saw the site in approximately 1980 or
7 shortly thereafter that could constitute a
8 nuisance?

9 MR. PECK: I object. Nuisance is a legal
10 term.

11 BY MS. AHERN:

12 Q. Do you have an understanding of the
13 meaning of the term nuisance, a common layperson's
14 understanding?

15 A. Yes.

16 Q. What is your understanding of the meaning
17 of that term?

18 A. Make a mess, debris, garbage.

19 Q. Are you aware of any condition that
20 existed on the former Dutch Boy Paint plant site at
21 the time that you last saw the site which was
22 approximately 1980 or '81, that any condition
23 present on the site at that time that constituted a
24 nuisance as you defined that term?

1 A. No.

2 MR. PECK: As the lay term nuisance, is that
3 correct?

4 THE WITNESS: There was no garbage, no debris.
5 The plant facilities were what I would consider
6 clean and another company could move in.

7 BY MS. AHERN:

8 Q. Are you aware of any condition that
9 existed on the property at the time that Artra or
10 Dutch Boy left the property that could have caused
11 or contributed to a nuisance?

12 A. No.

13 MR. PECK: Again, just for clarification, your
14 answer was concerning nuisance was a layperson's
15 understanding of that term; is that correct?

16 THE WITNESS: Right.

17 BY MS. AHERN:

18 Q. Do you know what happened to any of the
19 Dutch Boy plant documents after the plant was shut
20 down?

21 A. I have no idea at all. I would believe
22 that Jim Schultz might be able to tell you that.

23 Q. During the time period that you were
24 employed at the site, are you aware of any

1 STATE OF ILLINOIS)
 2) SS:
 3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 5 COUNTY DEPARTMENT - CHANCERY DIVISION

6 CITY OF CHICAGO,)

7 Plaintiff,)

8 vs.)

9 NL INDUSTRIES, INC., and ARTRA)
 10 GROUP, INC.,)

11 Defendant.)

12 - - - - -)
 13 NL INDUSTRIES, INC.,)

No. 91 CH 04534
 Judge Green

14 Third-Party Plaintiff,)

15 vs.)

16 GOODWILL INDUSTRIES OF CHICAGO and)
 17 COOK COUNTY, ILLINIOS; JOHN HECKENS;)
 18 M & T ENTERPRISES, INC.; LAVON TARR;)
 19 MARTIN S. BIEBER; RANDALL POLK)
 20 individually and d/b/a WRIP WRECKING)
 21 CO.; COLE-TAYLOR BANK, as Trustee)
 22 Under Trust Number 54141,)

23 Third-Party Defendants.)

24 The evidence deposition of CHESTER LICKING,
 called by the Defendant/Third-Party Plaintiff for
 examination, taken pursuant to the provisions of the
 Code of Civil Procedure and the Rules of the Supreme
 Court of the State of Illinois pertaining to the taking
 of depositions for the purpose of evidence, taken before

1 CAROLYN J. PALMER, a Notary Public within and for the
2 County of Cook, State of Illinois, and a Certified
3 Shorthand Reporter of said state, at Suite 6100, 200
4 East Randolph Drive, Chicago, Illinois, on the 24th day
5 of February, 1992, at 1:15 p.m.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 been -- there was some vapor, especially when it was
2 used with petroleum thinner. Because there was an
3 exposure of air there, and there was some vapor. So
4 there would have been some exit there at the ^{roller} ~~saper~~ mill.

5 Q Would there have been a hood there?

6 A No. The exposure was so low that there
7 wouldn't have been, at that time.

8 Q Mr. Licking, to your knowledge, was there ever
9 any dumping of waste on the property from 1929 to 1971?

10 A There was no dumping of waste on the property,
11 at National Lead Carter plant, from 1929 to 1971, while
12 I was there.

13 Q Now, the processes that you've described this
14 afternoon, the Carter process, the Barton process, and
15 the two mixing processes, were the pollution controls on
16 those systems consistent with the state of the art in
17 the industry, as you understood it, at the time?

18 A Yes, I think they were consistent with the
19 collection systems and in excess of the normal
20 collection systems in operation at that time.

21 Q What do you mean by "in excess"? Do you mean
22 better than or worse than?

23 A They were better. They were larger in most
24 cases. In all cases, that I recall.

1 on a ring-man count.

2 Q Is that a capacity measurement?

3 A Well, it's an opacity measurement is what it
4 is.

5 Q In other words, it's a measure of how dark the
6 smoke is from the stack?

7 A Yes.

8 Q Is that -- what type of ^{particulate} ~~particulate~~ matter?
9 Was it oil fired or was it --

10 A It was oil fired. There was some -- when we
11 were -- when we were using Illinois coal, a high demand
12 for power would sometimes cause a short surge of smoke.
13 Normally, those did not ^{provide} ~~provide~~ citations. It was
14 starting up that ^{provoked} ~~provided~~ the citation times.

15 Q Did the city ever cite the plant for improper
16 lead dust collection?

17 A Not that I recall. And I think I would have
18 known even when I was no longer in the management
19 system.

20 Q Mr. Licking, when you retired, can you
21 describe the conditions of the building on the property?

22 A When I retired, the buildings were in good
23 condition. Exterior steel window frames were painted.
24 The brickwork was tuck pointed where needed. The

1 sidewalks and driveways had been -- had replaced those.
2 It was in good condition.

3 Q Were the buildings structurally sound?

4 A The buildings were structurally sound, very.

5 Q Were the buildings in use?

6 A All of the buildings were in use at the time I
7 retired.

8 MR. RUNNING: We'll mark this as Exhibit 9.

9 (WHEREUPON, a document was marked as
10 LICKING Deposition Exhibit No. 9,
11 for identification, as of 2-24-92.)

12 BY MR. RUNNING:

13 Q By the way, Mr. Licking, was there a sprinkler
14 system in the plant when you left?

15 A Yes. There was a sprinkler system installed
16 in the plant in 1946, when the mixed paint plant was
17 installed. The city asked that the sprinkler system be
18 put in. Prior ^{to} ~~that~~ that, National -- the National Lead
19 plant had not used flammable liquids in the low flash
20 thinner condition that required or made a sprinkler
21 system desirable.

22 We did have a partial sprinkler system in
23 because we felt that there was some hazard in -- prior
24 to that. But when we changed over to the ready mix

1 Q And building four, what occurred there?

2 Building four.

3 A Building four is the -- is the building that
4 was used for the mixed paint plant after 1946. That was
5 where the mixed paint plant was installed. That -- that
6 originally had been a storage area for the white lead
7 plant and was not -- since there wasn't enough white
8 lead used anymore, the building was available.

9 Q Mr. Licking, are you familiar with fly
10 dumping, what that term means?

11 A No, I am not.

12 Q How about the term midnight dumping?

13 A Yes, I am familiar with midnight dumping from
14 my experience in -- as assessor in my township.

15 Q Well, let's just assume fly dumping means that
16 somebody comes onto a property, trespasses onto it
17 without permission, and dumps something on it and leaves
18 without permission again. Or midnight dumping, the same
19 connotation. Was there any fly dumping or midnight
20 dumping taking place on the property from 1929 to 1971?

21 A No, no, there was not. The site for the plant
22 was closed off at the north with an eight-foot wire
23 fence with a gate with barbed wire on top.

24 The other opening -- only other opening

1 from the buildings is down at the lower left-hand
2 corner. And there was a gate across those railroad
3 tracks.

4 The area and -- the opening in front of
5 that is where the trucks were coming in when they were
6 unloading or loading for the warehouse. And there was
7 no dumping on those sites at all.

8 Q Mr. Licking, I'm going to show you next a
9 series of photographs that were taken in 1980, after you
10 left the plant. I'm not going to ask you to vouch for
11 when the photographs were taken, but I am going to ask
12 you to identify the objects that are shown in the
13 photographs.

14 (WHEREUPON, documents were marked as
15 LICKING Deposition Exhibit Nos. 10
16 and 11, for identification, as of
17 2-24-92.)

18 (WHEREUPON, said documents were
19 tendered to the witness.)

20 BY MR. RUNNING:

21 Q Mr. Licking, can you identify the objects
22 shown on Exhibits 10 and 11?

23 A I can identify the objects shown on 10 and 11.
24 They are the exterior cone sections of Draco dust

1 A If I can.

2 Q Are you having a problem hearing me?

3 A No. You're doing very well now. I presume
4 that it's hard on some of the other people.

5 Q All right, sir. In 1929 when you first
6 arrived at the plant, okay, what processes was NL
7 engaged in at that time?

8 A As I said before, the only process that
9 National Lead was engaged in at that time was the Carter
10 process of manufacturing basic lead carbonate.

11 Q And that's the Carter process for the
12 manufacture of white lead, is that correct?

13 A Yes, ma'am.

14 Q Okay. Now, at the time -- and again, we're
15 going to just talk about 1929 -- how many employees were
16 there in the plant, if you can remember? And you can
17 give me a rough estimate.

18 A Less than seventy-five employees were there.

19 Q All right, sir. And how many shifts were
20 running at that time?

21 A It was a continuous process that was monitored
22 by three shifts.

23 Q So it was operating twenty-four hours a day?

24 A (Indicating yes.)

1 A No, I did not know.

2 BY MS. HERDINA:

3 Q That's okay. It you don't know, you don't
4 know.

5 Let's go to -- let's say 1946. All
6 right? What processes was NL engaged in at the Chicago
7 plant at that time?

8 A The process in 1946 that the Carter plant was
9 engaged in was the manufacturing of white lead and
10 Barton oxide.

11 Q And soft white lead, is that correct?

12 A Soft -- heavy and soft is the -- it is the
13 same compound; one just has a little bit more liquid in
14 it so that it will become more mobile.

15 Q Would it be fair not to distinguish between
16 them for purposes of this deposition?

17 A There is no --

18 Q No chemical difference?

19 A No.

20 Q Okay. In 1946, are you aware of how many,
21 again, approximately, employees were employed at the NL
22 plant?

23 A In 1946, probably a hundred. It would be
24 probably somewhat lower than that because the paint

1 plant had not quite started at that time.

2 Q All right, sir. And again, three shifts a
3 day?

4 A Yes, three shifts a day.

5 Q All right. And the products that were being
6 produced at that time were the white lead and the Barton
7 oxide, is that correct?

8 A That is correct.

9 Q And in 1946, were there any other products
10 being made at that time?

11 A There were no other products being made at the
12 Carter plant in 1946, than the white lead and the Barton
13 oxide.

14 Q Okay. Now, there came a time when there was
15 another product that was made, is that correct, or two
16 more products that were made, mixed paint?

17 A Mixed paint was another product that developed
18 after 1946.

19 Q All right. And do you recall approximately
20 when NL began making the mixed paint?

21 A Approximately 1947.

22 Q All right, sir. And when you retired in 1971,
23 was the company still producing the white lead, the
24 Barton oxide, and the mixed paint?

1 A Yes, they were still producing the white lead,
2 the Barton oxide, and the mixed paint, but the volume of
3 white lead was extremely low.

4 Q All right. Let's talk about that for a
5 minute. Let's say in 1946, what percentage of the plant
6 was devoted to producing -- of your overall production,
7 what percentage was the white lead and what percentage
8 was the Barton oxide?

9 A Okay. Are you -- in percentage figures you're
10 asking, are you speaking of area now or --

11 Q Volume of products sold I guess is the way I'm
12 looking at it.

13 A The volume of products sold.

14 Q Right. In other words, say 50 percent of the
15 activity was devoted to the Barton oxide and 50 percent
16 of the business in 1946 was devoted to the white lead.

17 MR. RUNNING: Are you asking by -- measured in
18 dollars or by pounds?

19 MS. HERDINA: By pounds.

20 BY MS. HERDINA:

21 Q Or is that how you sell the material?

22 A If you're referring to it by pounds, you're
23 going to get an erroneous answer -- you're going to get
24 an answer that's going to be very difficult for you to

1 A No.

2 BY MR. CHAMBERLAIN;

3 Q Were the pollution control devices that were
4 in place in 1946 state-of-the-art mechanisms?

5 A I think so, yes. Some of the changes that
6 were made as a result -- during the World War were the
7 best that we could find.

8 Q Okay. And when you say the best that you
9 could find, what do you mean? Did you read articles?

10 A Read articles and based on the experience of
11 other people who had used dust collecting equipment.

12 Q Were these people the other paint
13 manufacturing facilities or --

14 A No. Pittsburgh -- no.

15 Q Who were these people?

16 A They were friends that I had met through the
17 engineering meetings that I had attended.

18 Q And what meetings were those?

19 A American Chemical Society.

20 Q In 1971, were the pollution control mechanisms
21 at the plant state of the art?

22 A I would -- I think so.

23 Q Okay. What's your basis for saying that?

24 A That I had -- I had not heard of any others

1 that were better or equal. They were -- I had heard of
2 some that were equal, but I had not heard of any that
3 were any better. They were electrostatic
4 precipitations. But I was -- after some investigation,
5 I am convinced that that was not right for our
6 processing.

7 Q Why not?

8 A Because some of the pigments from the mixed
9 paint plant would ground out the electrostatic charge.
10 The Army had developed some of those during World War II
11 and found out that that was one of the problems.

12 Q The other paint factories that were using this
13 electrostatic precipitation used different pigments,
14 then?

15 A They did not use electrostatic either. That
16 was one of the alternatives that was considered. It --
17 there might possibly have been an improvement, but it
18 did not so indicate when we began checking it.

19 Q Did you look at any other alternatives for
20 pollution control equipment, other than the
21 electrostatic precipitation?

22 A .

23 I should rephrase that. Yes, we looked
24 at available -- different types of available filter

COPY

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION

6 CITY OF CHICAGO,)

7 Plaintiff,)

8 vs.) No. 91 CH 4534

9 NL INDUSTRIES, INC., and)

10 ARTRA GROUP, INC.,)

11 Defendant.)

12 The discovery deposition of JAMES W. SCHULTZ,
13 taken in the above-entitled cause, before Marcella
14 A. Taylor, a notary public of Cook County,
15 Illinois, on the 13th day of July, 1995 at 30
16 North LaSalle, Suite 900, Conference Room F,
17 Chicago, Illinois, pursuant to Notice.

18
19
20
21 Reported by: Marcella A. Taylor, CSR

22 License No.: 084-003172
23
24

1 Q. Would in the near future mean as quickly
2 as possible?

3 A. Well, I don't think it meant -- probably
4 six months to a year is my guess.

5 Q. Do you recall when you had your initial
6 meetings or discussions with Goodwill Industries?

7 A. Had to be before this. I would say
8 probably October, November time frame. I'm
9 just guessing.

10 Q. Now, do you recall if you had listed
11 the property before or after?

12 A. I'm sure we did, yes.

13 Q. Did you list the property before or
14 after you had spoken with Goodwill?

15 A. Listed before. I believe we listed it
16 right away.

17 Q. So the initial overtures with Goodwill
18 were after October 6th?

19 A. After we got a feeling that market was
20 not as good as originally anticipated by listing
21 it.

22 Q. Do you recall how long it took to take you
23 to get a feeling that the market was not as good as
24 you thought it might be when you listed it October

1 gate, we'll lock it up and we'll walk away?

2 A. Yes. That's my understanding. Keep in
3 mind I listed these options. I always say favor
4 options.

5 Q. Why do you always favor option one?

6 A. Cutoff costs, spending money they didn't
7 have. Not at first when I first walked in. I was
8 trying to sell it but once I realized that the
9 market was poor and once Goodwill showed interest,
10 I was in favor of it. ARTRA was out of this
11 business. We didn't need to be doing this at
12 this time.

13 Q. And you put the building up in October.

14 And you think Goodwill sometime before
15 the beginning of December certainly?

16 A. Yes. It was probably right around
17 there and I'm not sure.

18 Q. Is there anything that went into
19 calculations -- strike that.

20 What went into your calculations
21 for Option Number 2, Abandonment and Loss?

22 A. Appears to be the same type thing what
23 the tax benefits might be and what the costs
24 would be to maintain the building.

1 Do you recall what the purpose is?

2 A. Appears to be.

3 Q. Strike that. No questions about that.

4 The last part of this exhibit, the last
5 three pages starts with a letter from you to
6 Mr. Herman Kaye. Doesn't look like a date.
7 Can't see a date. A short letter. The next two
8 pages are a longer letter dated December 31, 1988.

9 And this is just to reiterate the
10 Property Tax Agreement?

11 A. Yes. I believe there is some concern on
12 Goodwill's part to make sure property taxes were
13 paid.

14 Q. And by this letter you're just --

15 A. I believe we had to do a letter of
16 credit or something.

17 Q. You're saying this comes from the credit
18 established?

19 A. Yes.

20 MR. PECK: That's all I have for now.

21 MR. OSLAN: Just a couple questions.

22 EXAMINATION

23 BY MR. OSLAN:

24 Q. You were last at the site in about the end

1 of December 1980 or early '81?

2 A. Possibly could have been as late as March.

3 Q. Most likely the last time you saw the

4 site was in early '91 or early '81?

5 A. I would say so.

6 Q. At that time were the buildings standing?

7 A. Yes.

8 Q. Was any building on the site at that time

9 in a demolished or semi-demolished state?

10 A. Not that I recall.

11 Q. Buildings were in good condition at that

12 time?

13 A. Concerning age of the plant.

14 Q. March of '81, was there a fence around

15 the property?

16 A. Definitely, yes.

17 Q. ARTRA had put that fence up?

18 A. That's correct.

19 Q. March of '81, had ARTRA taken all the

20 equipment out of the buildings?

21 A. I'm not sure. I believe so. I believe

22 the agreement was --

23 Q. You, between as early as '78 and '81,

24 visited the site about 40 times; is that right?

1 A. I would say mostly later, probably
2 late '80.

3 Q. After the operation had been shut down,
4 you visited the site about 40 times, right?

5 A. Probably, yes.

6 Q. You ever get sick?

7 A. No.

8 Q. Ever throw up?

9 A. No.

10 Q. Ever see anybody else get sick?

11 A. No.

12 Q. People dropping on the property because
13 they were violently ill because this was such a
14 hazard?

15 A. No.

16 Q. In your view, was this ever a hazard on
17 this site?

18 A. No, to my knowledge now.

19 Q. Did you ever notice a condition that would
20 lead you to say that we should study this?

21 A. No.

22 Q. As far as you know, there was absolutely
23 nothing wrong with this property in March of 1981;
24 is that right?

1 Q. Were you involved in tax matters in the
2 sale?

3 A. After the fact not during negotiations,
4 no. It was already a deal by then.

5 Q. Do you have general knowledge of the
6 transaction though?

7 A. Some memory of it. It's been a long
8 time though.

9 Q. Do you know when the coatings division
10 was sold to Sherwin Williams?

11 A. I believe it was in 1980.

12 Q. Do you know what was sold?

13 A. My understanding it was all the plants
14 except for this building, except for Chicago plant,
15 based on what I remember. It's been quite awhile.

16 Q. Can you remember any reason why the
17 Chicago plant was not sold?

18 A. Sherwin Williams had a plant in the area.

19 Q. Can you remember any other reasons why
20 the Chicago plant was not sold to Sherwin Williams?

21 A. Not to knowledge.

22 Q. Do you know if the sale of the coatings
23 division to Sherwin Williams was profitable for
24 ARTRA?

1 A. No, I don't.

2 Q. Let's go specifically to the closeout.

3 What occurred in the closeout? What
4 did you do?

5 A. Well, I went down there after it was sold
6 to Sherwin Williams -- after the rest of the paint
7 division was sold to Sherwin Williams, and I was
8 told to pretty much determine -- I was on my own
9 to figure out what to do with that plant. Try
10 to sell it. Try to analyze what to do with the
11 equipment and all that. We wanted to liquidate.

12 Q. Let's start out with the equipment.
13 You testified earlier that you went there to
14 inventory the equipment.

15 What else did you do with the equipment?

16 A. Well, after I mean, I walked the building
17 several times to see who was there. I also made a
18 list of it and then because of the knowledge of
19 the sale, there was phone calls coming in, people
20 looking to buy it and I believe I also called
21 some liquidators to see what the value might be.

22 Q. People called you?

23 A. Yes.

24 Q. In Northfield?

1 A. Either place, either at the Chicago
2 plant or at Northfield.

3 MR. PECK: Let's go ahead and mark this as
4 Exhibit 3.

5 (Whereupon, Deposition
6 Exhibit No. 3 was marked
7 for identification.)

8 BY MR. PECK:

9 Q. Mr. Schultz, I'm showing you now
10 Exhibit 3. Go ahead and take a couple seconds
11 to familiarize yourself with this.

12 Exhibit 3 is a letter from Belson,
13 B-e-l-s-o-n, Scrap and Steel addressed to
14 Mr. James W. Schultz. Let me first start
15 out with your title is assistant treasurer?

16 A. It was also tax manager.

17 Q. Those are equivalent, tax manager is
18 assistant treasurer?

19 A. A lot of titles in a company.

20 Q. It's dated October 20th.

21 Just describe how this letter came
22 into being?

23 A. I'm not sure if we contacted this person
24 or they contacted us. I really don't remember.

1 There were so many things going on.

2 Q. So you had contact with Belson?

3 A. I'm sure, I did.

4 Q. Did Belson come and look at the plant?

5 A. I'm sure he did. He had knowledge
6 of equipment that was there.

7 Q. Now, there are five numbered paragraphs
8 on the first page. The first four are regarding
9 particular types of equipment or scrap. Number one
10 is 24 copper kettles. Number two is two red lined
11 tanks. Number three is portable scales and number
12 four is scrap metal and these all refer to building
13 five. First three are building 5-2. Fourth is
14 building 5-1, 2 and 3.

15 Now, when we reviewed the map earlier
16 which is Exhibit 1 is building five, is that the
17 section that we talked about where NL had continued
18 to operate?

19 A. I believe so, yes.

20 Q. Did the transaction which is discussed
21 in this letter actually occur?

22 A. I believe so, yes.

23 Q. Was this all of the scrap metal equipment
24 and machinery in buildings 5-1, 2 and 3?

1 A. I believe there's some smaller items
2 besides this. This is just the major things.

3 Q. Did Belson take those smaller items also?

4 A. I really don't remember. There were
5 several scrap people that went through this
6 building.

7 Q. The equipment identified in the first,
8 second and third paragraph of this letter, do
9 you know what that equipment was used for?

10 A. I can only speculate. It was for making
11 lead paint that was the section of the building
12 it was in. I don't know.

13 Q. Do you know who might know what
14 it was used for?

15 A. Lot of the players aren't around anymore.
16 I don't know. Plant manager possibly. Several of
17 those at the time period.

18 Q. Do you recall who the plant managers
19 were during this time?

20 A. Mr. Jarvis was the only one I remember.

21 Q. And do you recall what the time
22 frame he was plant manager?

23 A. Only that he was plant manager at
24 the time it was sold. I don't know.

1 Q. Which is the fall of 1980?

2 A. Yes.

3 Q. Earlier you testified that it was your
4 job to determine what to do at the Chicago plant
5 and that you were given that job by Mr. Abel?

6 A. That's correct. I would make
7 recommendations to Mr. Abel and he would
8 approve or disapprove.

9 Q. Would Mr. Abel discuss your
10 recommendations with Mr. Harvey?

11 A. It's possible.

12 Q. And what to do with the plant that
13 included the entire plant or the equipment
14 in the plant?

15 A. Entire plant.

16 Q. Lock, stock and barrel?

17 A. Correct.

18 MR. PECK: Let's mark the next one Exhibit 4,
19 I believe.

20 (Whereupon, Deposition
21 Exhibit No. 4 was marked
22 for identification.)

23 MR. PECK: I've just handed you Exhibit 4.
24 Would you take a couple minutes to look this over?

1 sale?

2 A. I believe they were sold already, too.

3 Q. And when you say they were sold, who
4 would they be sold to?

5 A. I don't remember the name. I don't
6 remember.

7 Q. Would it be --

8 A. There was a chemical company that
9 bought the majority of the --

10 Q. Would it be fair to say that just
11 summarizing when you say they were sold which
12 means they're not available to be sold to A-1?

13 A. Correct.

14 Q. After the sale of materials, scrap,
15 equipment, et cetera, to Belson and to A-1,
16 do you recall if any materials, equipment was
17 retained at the plant?

18 A. It wasn't sold.

19 Q. It wasn't sold?

20 A. I believe this was the final transaction
21 to sell everything. I'm just vague on it. Doesn't
22 mean it was all taken out but I believe everything
23 was.

24 Q. Did you visit the plant after all the

E

WRIP WRECKING COMPANY
DEMOLITION ENGINEERS
8400 SOUTH YATES BOULEVARD • CHICAGO, ILLINOIS 60617
312. 75-8440

Wrip Wrecking Company, hereinafter known as the Wrecker, agrees to raze the steel-and-brick-structured building located at 12000-12022 South Peoria Street, 909-929 West 120th Street, Chicago, Illinois.

M & T Corporation, hereinafter known as the Owner, agrees to pay all delinquent water bills related to said buildings that may result in the Wrecker not being able to obtain wrecking permits.

The Wrecker shall obtain all wrecking permits required by the City of Chicago.

The Wrecker agrees to raze said building up to the wall of the adjoining building.

The Wrecker further agrees to remove all debris and materials, backfill the area with a solid compaction of brick bat, and level off to grade level.

The Owner agrees to pay the Wrecker upon completion the sum of five thousand dollars (\$5,000.00).

Accepted:

Saron Tarr
M & T Corporation
ENTERPRISES INC.
President

Ronald Kirk
Wrip Wrecking Co.

March 9, 1983

000144

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO,

Plaintiff,

v.

NL INDUSTRIES, INC. and
ARTRA GROUP, INC.,

Defendants;

No. 91 CH 04534
Judge Green

NL INDUSTRIES, INC.,

Counterclaim Plaintiff and
Counterclaim Defendant,

v.

ARTRA GROUP, INC.,

Counterclaim Defendant and
Counterclaim Plaintiff;AFFIDAVIT OF
MARY E. DINKEL

State of Illinois

County of Cook

SS

I, Mary E. Dinkel, hereby declare and affirm that:

1. My name is Mary E. Dinkel. I was employed by the Illinois Environmental Protection Agency ("IEPA") from September 1984 through November 1987. In approximately 1985-1987, my title was Project Manager, Immediate Removal Unit.

2. In my position at IEPA, I served as the on-scene coordinator for a removal action undertaken at the former Dutch Boy paint plant at 120th and Peoria in Chicago, Illinois. I was present at the site almost everyday of this removal action and am personally familiar with IEPA's activities at the site.

3. IEPA first became aware of the Dutch Boy site in late 1984 after demolition activities at the plant were already underway. Prior to 1984, IEPA had no concerns regarding the environmental condition of the site.

4. In approximately 1986, at the request of the City of Chicago, IEPA was called in to conduct an investigation and remediation of the Dutch Boy site. The City had ordered Mr. Tarr and his contractor, Wrip Wrecking Company, to cease their demolition activities at the site and to cooperate with the IEPA investigation.


5. IEPA concluded that the site hazards were caused by the improper demolition. At that time, the site was covered with demolition debris consisting primarily of concrete, rods, steel, brick and miscellaneous equipment. Most of the demolition debris was commingled with lead particles and lead dust suggesting that these substances had been contained within plant building prior to the demolition. I conducted sampling of the demolition debris and it was determined that the source of the lead contamination at the site was lead particles and dust contained inside plant buildings which were released and became airborne during the wrecking operations of Tarr and Wrip Wrecking. I also conducted additional sampling the results of which indicated that the asbestos contamination originated with pipe insulation that was disturbed during wrecking operations.

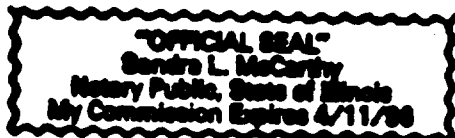
6. IEPA carried out a removal action at the site lasting several months. The IEPA action was completed by late 1986 at a cost of several million dollars and eliminated any imminent threat at the site.

7. I swear that the foregoing information provided by me in this statement is true to the best of my knowledge, information and belief.

Subscribed and sworn to
before me in my presence this
14 day of November, 1995.


NOTARY PUBLIC


Mary E. Dinkel



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

CITY OF CHICAGO,

Plaintiff,

v.

NL INDUSTRIES, INC. and
ARTRA GROUP, INC.,

Defendants;

No. 91 CH 04534
Judge Green

NL INDUSTRIES, INC.,

Counterclaim Plaintiff and
Counterclaim Defendant,

v.

ARTRA GROUP, INC.,

Counterclaim Defendant and
Counterclaim Plaintiff;AFFIDAVIT OF
MARY E. DINKEL

State of Illinois

County of Cook

SS

I, Mary E. Dinkel, hereby declare and affirm that:

1. My name is Mary E. Dinkel. I was employed by the Illinois Environmental Protection Agency ("IEPA") from September 1984 through November 1987. In approximately 1985-1987, my title was Project Manager, Immediate Removal Unit.

2. In my position at IEPA, I served as the on-scene coordinator for a removal action undertaken at the former Dutch Boy paint plant at 120th and Peoria in Chicago, Illinois. I was present at the site almost everyday of this removal action and am personally familiar with IEPA's activities at the site.

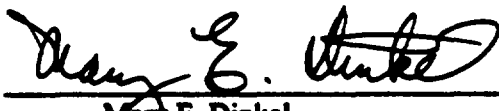
3. IEPA first became aware of the Dutch Boy site in late 1984 after demolition activities at the plant were ~~already underway~~. ~~Previously, IEPA had no concerns regarding the~~ environmental condition of the site.

4. In approximately 1986, at the request of the City of Chicago, IEPA was called in to conduct an investigation and remediation of the Dutch Boy site. The City had ordered Mr. Tarr and his contractor, Wrip Wrecking Company, to cease their demolition activities at the site and to cooperate with the IEPA investigation.

5. IEPA concluded that the site hazards were caused by the improper demolition. At that time, the site was covered with demolition debris consisting primarily of concrete, rods, steel, brick and miscellaneous equipment. Most of the demolition debris was commingled with lead particles and lead dust suggesting that these substances had been contained within plant building prior to the demolition. I conducted sampling of the demolition debris and it was determined that the source of the lead contamination at the site was lead particles and dust contained inside plant buildings which were released and became airborne during the wrecking operations of Tarr and Wrip Wrecking. I also conducted additional sampling the results of which indicated that the asbestos contamination originated with pipe insulation that was disturbed during wrecking operations.

6. IEPA carried out a removal action at the site lasting several months. The IEPA action was completed by late 1986 at a cost of several million dollars and eliminated any imminent threat at the site.

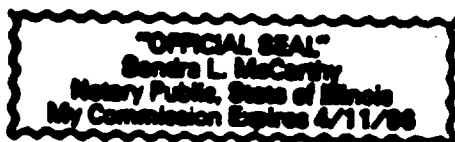
7. I swear that the foregoing information provided by me in this statement is true to the best of my knowledge, information and belief.



Mary E. Dinkel

Subscribed and sworn to
before me in my presence this
16 day of November, 1995.


NOTARY PUBLIC



1 STATE OF ILLINOIS)
2) SS:
COUNTY OF C O O K)
3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION
4 CITY OF CHICAGO,)
5)
6 Plaintiff,)
7 vs.) 91 CH 04534
8 NL INDUSTRIES, INC. and)
ARTRA GROUP, INC.,)
9 Defendants;)
10 NL INDUSTRIES, INC.,)
Counterclaim Plaintiff and)
11 Counterclaim Defendant,)
12 vs.)
13 ARTRA GROUP, INC.,)
14 Counterclaim Defendant and)
Counterclaim Plaintiff.)
15
16 The deposition of MICHAEL J. URSETTO,
17 taken before HEATHER M. PERKINS, C.S.R., Notary
18 Public, pursuant to the provisions of the Rules
19 of Civil Procedure of the State of Illinois and
20 the Rules of the Supreme Court thereof
21 pertaining to the taking of depositions for the
22 purpose of discovery at 200 East Randolph Drive,
23 Chicago, Illinois, commencing at the hour of
24 1:00 o'clock on the 5th day of April, 1995.

1 expertise.

2 MS. AHERN: I just want to clarify the
3 area of his background and what he considers his
4 own knowledge and expertise to be.

5 MR. CHAMBERLAIN: I think you have
6 explored that in the area of his duties and his
7 job, but he's not here as an expert.

8 BY MS. AHERN:

9 Q. Do you have any training in
10 environmental engineering?

11 A. No.

12 Q. Do you have any training in
13 toxicology?

14 A. No.

15 Q. Do you have any background with regard
16 to building demolition?

17 A. No.

18 Q. Do you have any expertise with regard
19 to hazardous wastes?

20 A. No.

21 Q. Do you have any background or
22 expertise with regard to lead paint
23 manufacturing?

24 A. No.

1 Q. How about the maintenance of lead
2 paint manufacturing facilities, do you have any
3 familiarity or background with those issues?

4 A. No.

5 Q. Are you knowledgeable with regard to
6 asbestos cleanup?

7 A. No.

8 Q. Are you knowledgeable with regard to
9 environmental regulations?

10 A. No.

11 Q. Do you have any background or
12 expertise in environmental law of any kind?

13 A. No.

14 Q. What was your very first involvement
15 with the former Dutch Boy paint site at 120th
16 and Peoria?

17 A. I met with Commissioner Zalewski and
18 Ms. Frederick, Becky Frederick.

19 Q. Do you know when that was?

20 A. I believe it was in January or
21 February of whatever year we started at, '91.

22 Q. Prior to January of 1991, did you have
23 any contact or involvement with the former Dutch
24 Boy paint site at 120th and Peoria?

1 sites?

2 A. There may have been a William Mincey,
3 M-i-n-c-e-y, a refuse collection coordinator.

4 Q. What was your position vis-a-vis that
5 of Mr. Wortel during this time period, the 1991
6 springtime cleanup?

7 A. Can you rephrase that, please?

8 Q. During the 1991 spring cleanup of the
9 120th and Peoria sites, what was your position
10 vis-a-vis that of Mr. Wortel, was he your
11 supervisor?

12 A. Yes. When he was there, he was my
13 supervisor. He actually came out. He has a
14 number of duties and he's out in the street, and
15 then he comes by and supervises the work there.
16 He is my supervisor, yes.

17 Q. How often would he come to the cleanup
18 location at 120th and Peoria during the spring
19 1991 cleanup?

20 A. He would probably be there every day
21 mostly. He used to have to get his trucks out
22 of the garbage lot in the morning, then he would
23 come by me. Basically, most of the day.

24 Q. Would he be there for a couple of

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)

4 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
5 COUNTY DEPARTMENT - CHANCERY DIVISION

6 CITY OF CHICAGO,)

7 Plaintiff,)

8 vs.)

91 CH 04534

10 NL INDUSTRIES, INC. and)
11 ARTRA GROUP, INC.,)

12 Defendants;)

13 NL INDUSTRIES, INC.,)
14 Counterclaim Plaintiff and)
15 Counterclaim Defendant,)

16 vs.)

17 ARTRA GROUP, INC.,)

18 Counterclaim Defendant and)
19 Counterclaim Plaintiff.)

20 The deposition of WILLIAM WORTEL,
21 taken before HEATHER M. PERKINS, C.S.R., Notary
22 Public, pursuant to the provisions of the Rules
23 of Civil Procedure of the State of Illinois and
24 the Rules of the Supreme Court thereof
pertaining to the taking of depositions for the
purpose of discovery at 200 East Randolph Drive,
Chicago, Illinois, commencing at the hour of
9:15 o'clock on the 5th day of April, 1995.

VICTORIA COURT REPORTING SERVICES, INC. (312) 443-1025

ORIGINAL

1 aware?

2 A. I don't understand that.

3 Q. Are you aware of any cleanups in
4 addition to or other than the cleanup that
5 occurred at this site from February 1991 to
6 April 1991?

7 MR. CHAMBERLAIN: Objection. Are you
8 talking about Streets and Sanitation's cleanup?

9 MS. AHERN: Cleanup of any kind that
10 you might be aware of, any kind of environmental
11 cleanup of conditions at the site.

12 MR. CHAMBERLAIN: Objection to
13 "environmental." Is "environmental" including
14 solid waste, fly dumping?

15 MS. AHERN: Any cleanup of any sort.

16 THE WITNESS: Fly dumping on the
17 street as we were going along with it.

18 BY MS. AHERN:

19 Q. So other than the cleanup that the
20 Department of Streets and Sanitation undertook
21 in early 1991, you are aware of other occasions
22 where fly dumping was cleaned up at the site; is
23 that your testimony?

24 A. There was fly dumping while we were

1 cleaning up the site.

2 Q. Yes, but other than the time period
3 during which you were involved in the cleanup at
4 the site in early 1991, are you aware of any
5 other occasions where that particular site or
6 property was cleaned up?

7 A. No.

8 Q. You testified earlier that you were
9 aware that there had been fly dumping that
10 occurred at the site at some point in time in
11 the early 1980s; is that true?

12 A. Yes.

13 Q. And was that fly dumping debris still
14 present at the site in 1991 or had it been
15 cleaned up at some time prior to that as far as
16 you know?

17 A. I don't know.

18 Q. So while you have observed fly dumping
19 at the site, at some point in the early 1980s
20 you're unaware whether the Department of Streets
21 and Sanitation or any other department within
22 the City undertook to clean that fly dumping up
23 prior to the time where the Department of
24 Streets and Sanitation undertook this cleanup in

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

CITY OF CHICAGO,)	
Plaintiff,)	
)	NO. 91 CH 4534
vs)	
)	
N.L. INDUSTRIES, et al.,)	
Defendant.)	

REPORT OF PROCEEDINGS had at the hearing of the
above-entitled cause, before the Honorable Albert
Green, Judge of said court, on the 17th day of
October, 1991.

P R E S E N T:

HON. KELLY WELSH,
Corporation Counsel, City of Chicago, by;
MS. ARLENE MARTIN,
MS. SUSAN HERDIA, and
MR. WILLIAM CHAMBERLIN,
Assistants Corporation Counsel,
appeared on behalf of the plaintiff,

MR. REED OSLAN, and
MR. ANDREW RUNNING,
appeared on behalf of N.L. Industries,

MR. SCOTT TUCKMAN,
appeared on behalf of ARTRA.

CAROL JANUSZ, CSR
Official Court Reporter
Law/Chancery Division
Circuit Court of Cook County

1 complained of activity." That's at Page 266.

2 Accordingly, it is the defendants' position
3 that the complaint fails to state a claim for nuisance
4 on the ground that the defendants are not current
5 owners or operators of the property. This Court finds
6 that the plaintiff's complaint does state a cause of
7 action for public nuisance for a number of reasons.

8 First this Court finds that it's possible for
9 defendants to remain liable for a nuisance after the
10 transfer of the property. The Restatement of Torts
11 (second) Section 840 provides, "One, a vendor or lessor
12 of land upon which there is a condition involving a
13 nuisance for which he would be subject to liability if
14 he continued in possession remains subject to liability
15 for the continuation of the nuisance after he transfers
16 the land."

17 This case involves the ownership and/or
18 operation of a facility where the defendants allegedly
19 caused to be manufactured, stored, transported, used,
20 released, discarded, and disposed of in the air and
21 beneath and upon the ground of the facility numerous
22 hazardous substances. Plaintiff has alleged that the
23 activities of defendants including disposing,
24 abandoning, and discarding of hazardous substances on

1 the site, constitutes injury to the public, and that
2 the current condition of the site was a foreseeable
3 consequence of the activities of the defendants.

4 To find that those who allegedly contaminated
5 the environment with hazardous substances and then
6 subsequently transferred the property cannot be liable
7 for a nuisance because they no longer control, possess,
8 or own the property would be unconscionable considering
9 not only the magnitude of the offense but the current
10 trend in environmental regulations and the allocation
11 of liability.

12 Courts in other jurisdictions that have faced
13 situations similar to the one at hand have held prior
14 owners and operators liable for nuisance. In United
15 States versus Ottai and Goss, Inc., 630 F.Supp. 1361
16 from the District of New Hampshire, the State of New
17 Hampshire brought claims against the defendants
18 asserting they were liable for a nuisance they created
19 as owners and operators of drum facilities.

20 The court found that the hazardous wastes
21 released were undisputedly recognized as dangerous to
22 the public health and safety. The court held that an
23 owner of a site or even a past owner cannot avoid his
24 obligations by conveying the land. And that's at Page

1 1407.

2 The court relied on the Restatement (second)
3 of Torts Section 840 and New Hampshire law in finding
4 that a prior owner and operator is liable for storage
5 and disposal of hazardous waste if it knew or had
6 reason to know that a public nuisance existed on the
7 property.

8 Further in Brewer versus Monsanto
9 Corporation, 644 F.Supp. 1267 District of Tennessee,
10 Northern District, the court concluded that a prior
11 owner who has created a nuisance does not escape
12 liability simply by selling the property.

13 In U.S. versus Hooker Chemical and Plastic
14 Corp., 31 Fed. 1111 from the District of New York the
15 defendant Occidental Chemical Corporation argued that
16 any liability it may have incurred for creation of the
17 public nuisance of love canal was terminated when it
18 sold the property. The court disagreed finding
19 Occidental's "sale defense" without merit. The court
20 agreed with the state's contention that the different
21 interest protected by the doctrines of public and
22 private nuisance as well as the nature of the activity
23 involved required the application of an exception of
24 the limitation of the vendor's liability that was found

1 in the Restatement (second) of Torts. And that's at
2 Page 1118.

3 In this case the city has alleged that the
4 defendants as prior owners of the site created a
5 nuisance by the improper use, storage, and disposal of
6 hazardous materials on the property. The city further
7 alleged that prior to the transfer to Goodwill the
8 defendants did not clean up the hazardous materials,
9 but knew or should have known that Goodwill did not
10 have the resources or knowledge to abate this nuisance.
11 Taking these allegations as true, the complaint states
12 a cause of action against the defendants for public
13 nuisance.

14 The Court further notes that the cases relied
15 on by the defendants are distinguishable. Those cases
16 do not involve a prior landowner or operator who
17 created a nuisance involving hazardous substances. The
18 case of People of the State of Illinois versus
19 Brockman, 143. Ill. 2d 351, is factually inapposite to
20 the case at hand. In Brockman the court held that,
21 "Control does not operate to bar a contribution claim
22 based on violations of the Illinois Environmental
23 Protection Act which creates a public nuisance. Where
24 a proper claim for contribution may be stated the fact

1 CIRCUIT COURT, COUNTY OF COOK, STATE OF ILLINOIS

2 COUNTY DEPARTMENT - CHANCERY DIVISION

3 -----

4 DEPOSITION OF CLARENCE P. SMITH

ORIGINAL

5 June 23, 1992

6 -----

7 CITY OF CHICAGO,

8 Plaintiff,

9 v.

10 NL INDUSTRIES, INC, and ARTRA,

11 Defendants,

12 -----

NL INDUSTRIES, INC.,

13

Third-Party Plaintiff,

14

v.

15

GOODWILL INDUSTRIES OF CHICAGO and COOK COUNTY,

16 ILLINOIS; JOHN HECKENS; M&T ENTERPRISES, INC.; LAVON

TARR; MARTIN S. BIEBER; RANDALL POLK, individually and

17 d/b/a WRIP WRECKING CO.; COLE-TAYLOR BANK, as Trustee

under Trust Number 54141,

18

Third-Party Defendants.

19 -----

20 Pursuant to Notice and the Colorado

Rules of Civil Procedure, the deposition of CLARENCE

21 P. SMITH, called by Defendant NL Industries, Inc., was

taken on Tuesday, June 23, 1992, commencing at 10:10

22 a.m., at the Fort Collins Marriott, 350 East Horse

Tooth Road, Fort Collins, Colorado, before Pam D.

23 Buckner, Registered Professional Reporter and Notary

Public within Colorado.

24

25

1 plant manager from 1958 until you left in 1977.

2 A. As plant manager I had the responsi-
3 bility for the overall operation of the plant, and
4 that included production of paint and lead oxides,
5 responsible for maintenance, production inventory
6 control, purchasing, labor relations, salary
7 administration. That pretty much covers it.

8 MS. HERDINA: I'm sorry. What was the
9 last one?

10 THE DEPONENT: Salary administration.

11 A. That was all under the guidance and
12 supervision of division headquarters.

13 Q. (By Mr. Running) Did various managers
14 report to you during this period?

15 A. Yes, all the production superintendents
16 reported to me.

17 Q. Did Mr. Chester Licking report to you?

18 A. Yes, he did. He was my chief engineer.

19 Q. Who was the most knowledgeable person
20 about the plant operations during the time you were
21 there?

22 A. For equipment?

23 Q. Yes.

24 A. Chester Licking.

25 Q. Mr. Smith, during the time you were at

1 the plant, to your knowledge, was any waste ever
2 disposed of on the plant site itself?

3 A. None ever.

4 Q. Could you summarize the condition of
5 the plant during the time period you were there.

6 A. Well, the plant was maintained in a
7 good operating condition. The buildings were
8 maintained, they were painted several times, whenever
9 needed, during the period when I was there. Most the
10 time when I was there, we had actually two painters
11 which we carried full-time there. Their only duty was
12 to keep the plant painted inside and outside and so
13 forth and so on. So the plant was maintained in a
14 very good operating condition.

15 Q. How would you characterize the
16 cleanliness of the plant?

17 A. It was -- it was clean, and we kept it
18 clean, which was one of the requirements of it because
19 we realized there was some toxic substances in there.
20 So it was never let to accumulate anything on the
21 floor or in the areas such as that -- many times the
22 beams were vacuumed and so forth. We had a central
23 vacuum system which was used very much in areas where
24 lead was being processed.

25 Q. Mr. Smith, were you familiar with the

1 type of pollution control equipment that was being
2 used in the paint and the oxide industries?

3 A. Yes.

4 Q. How did you become familiar with the
5 types of pollution control equipment that were
6 available during the time you were there?

7 A. Through my contact with the engineering
8 department and, of course, all the time I was there
9 and particularly in the oxide department when I
10 operated the oxide department.

11 Q. Would you, for example, visit other
12 plants?

13 A. I did.

14 Q. Did you have contact with suppliers of
15 pollution control equipment?

16 . We had contact with suppliers of the
17 pollution control equipment, the dust collectors,
18 primarily. Most of them were built by DRACCO Company.
19 We had a few that were -- which we tried out which
20 were built by Sly, Sly Dust Collectors, which were
21 basically the same but a different design.

22 Q. How do you spell Sly?

23 A. S-l-y.

24 Q. Was NL a member of any trade groups or
25 industry groups that would allow you to become

1 familiar with the available pollution control
2 equipment?

3 A. We were a member of Paint, Varnish and
4 Lacquer Association.

5 Q. Did other paint companies have a
6 practice as to whether or not they shared their
7 pollution control procedures with their competitors?

8 MS. HERDINA: Objection --

9 A. Yes, they did.

10 MS. HERDINA: -- foundation. I don't
11 know how he would know that.

12 THE DEPONENT: I visited many of the
13 plants.

14 MR. RUNNING: Let me ask the questions,
15 sir.

16 Q. (By Mr. Running) Mr. Smith, you've
17 testified there was a practice in the industry
18 regarding sharing or not sharing pollution control
19 knowledge.

20 MS. HERDINA: I don't know that he's
21 testified to that. I don't think he said that. I
22 think he just said that a member of an organization --
23 or NL was a member of an organization, but I don't
24 think we've established that there was any exchange of
25 information here.

1 Q. (By Mr. Running) How do you know there
2 was such a practice?

3 A. I visited their plant.

4 Q. What did you learn during these visits?

5 A. We, of course, watched their operation,
6 particularly when we visited them. We looked at the
7 equipment they had, film equipment, what type, how
8 they controlled air dust, and the whole general area.
9 The paint industry was fairly opened as far as the
10 plant manufacturer and in sharing information because
11 we would also get individuals from other paint plants
12 to come and see us.

13 Q. That was going to be my next question.
14 Did NL reciprocate by sharing information about its
15 plant?

16 A. Yes, it did.

17 Q. Based on your visits with other plants
18 and your conversations with counterparts at other
19 companies, how did the NL Chicago plant stack up with
20 other plants in the industry in terms of pollution
21 control?

22 A. We were probably more aware of
23 pollution control because of having been in the lead
24 business prior to going into the paint business. We
25 were more conscious of dust escaping and so forth and

1 so on. We were probably more careful and had more
2 collectors than most the paint plants did.

3 Q. Mr. Smith, during the time you were at
4 the NL plant in Chicago, which all of us refer to as
5 the Dutch Boy plant --

6 A. Dutch Boy plant, Carter plant, West
7 Pullman plant.

8 Q. Any of those?

9 A. Any of those names.

10 Q. Did you ever receive any complaints
11 from neighbor about the operation of the plant?

12 A. We never did.

13 Q. Was regulatory compliance or legal
14 compliance within your area as plant manager?

15 A. Yes.

16 Q. When you were superintendent of the
17 oxide department, is that a subject that you would
18 address as well?

19 A. Yes.

20 Q. Could you describe any criticisms that
21 the plant received from state or local governmental
22 officials about the operations. By criticisms, I mean
23 to include anything from a citation to a verbal
24 warning, any comment from a governmental official that
25 was negative about the operation of the plant that you

1 state what they were going to do.

2 MS. HERDINA: Objection.

3 MR. RUNNING: Well, no. He can say
4 that.

5 Q. (By Mr. Running) Could you summarize
6 the condition of the plant as of your last day there,
7 which I take it was either July 1 or the last workday
8 before July 1 of 1977?

9 A. The plant was in good operating
10 condition, and it was operating and producing paint
11 and lead oxide.

12 Q. Were the buildings in good condition?

13 A. The buildings were in good condition.

14 Q. What was the state of the security at
15 the plant?

16 A. We had a security service who was there
17 during the night hours. I think they started at 4:00
18 and operated until 7:00 the next morning. They
19 furnished guards which patrolled the plant and made
20 sure it was secured and locked up. They also lighted
21 the fire watch also while on their rounds, but they
22 made rounds hourly for the entire plant.

23 Q. On or before July 1, 1977, did you
24 observe any dumping or illegal dumping by others on
25 the property?

1 A. There was none. The guards sat in the
2 front, and the back gate was always locked as soon as
3 everybody left the plant.

4 Q. Let me ask you about one other type of
5 governmental inspection. Do you recall any
6 inspections of the effluent and municipal sewer from
7 the plant?

8 A. Yes. The City of Chicago gave us a
9 thorough inspection of the effluent that went from the
10 plant. This, again, was in, I would say, 72, '73. The
11 City of Chicago sent up a team, and they installed
12 monitoring devices in all the manholes and sewers
13 leading from the plant, and they ran continuous
14 monitors on the effluent for at least two or three
15 days.

16 Q. Did they find any lead violations in
17 the sewer?

18 A. They found no lead violations in the
19 sewer.

20 Q. Did they have any criticisms at all of
21 the plant?

22 A. They did criticize that, I believe, we
23 were above the limits in mercury into the sewer. We
24 questioned this. I think this was at the same time, I
25 think, when the whole paint industry was being

1 carefully monitored on it because as the Chicago
2 Varnish and Lacquer Association, we appealed to the
3 City of Chicago that the limits were impossible to
4 meet.

5 As a matter of fact, we had run tests
6 on the water coming into the plant, and it was just as
7 high or higher than the effluent in mercury that was
8 leaving the plant. And we questioned the advisability
9 of whether it was really possible for us to eliminate
10 mercury in our process. That's an argument we didn't
11 win with the City.

12 Q. Were there any discharges onto the
13 surface of the plant as opposed to the municipal sewer
14 system?

15 A. No.

16 Q. Mr. Smith, did any governmental
17 official during the time you were at the plant find
18 that the plant was a nuisance?

19 MS. HERDINA: Objection. Go ahead and
20 answer.

21 MR. RUNNING: You can answer it.

22 A. Never.

23 MR. RUNNING: I have no further
24 questions. Thank you, Mr. Smith.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

CITY OF CHICAGO,)

Plaintiff,)

vs.)

NL INDUSTRIES, INC., and ARTRA)
GROUP, INC.,)

Defendant.)

- - - - -) No. 91 CH 04534
NL INDUSTRIES, INC.,) Judge Green

Third-Party Plaintiff,)

vs.)

GOODWILL INDUSTRIES OF CHICAGO and)
COOK COUNTY, ILLINIOS; JOHN HECKENS;)
M & T ENTERPRISES, INC.; LAVON TARR;)
MARTIN S. BIEBER; RANDALL POLK)
individually and d/b/a WRIP WRECKING)
CO.; COLE-TAYLOR BANK, as Trustee)
Under Trust Number 54141,)

Third-Party Defendants.)

ORIGINAL

The deposition of PATRICK J. NOONAN, called by
the Defendant/Third-Party Plaintiff for examination,
taken pursuant to the provisions of the Code of Civil
Procedure and the Rules of the Supreme Court of the
State of Illinois pertaining to the taking of
depositions for the purpose of evidence, taken before

1 CAROLYN J. PALMER, a Notary Public within and for the
2 County of Cook, State of Illinois, and a Certified
3 Shorthand Reporter of said state, at Suite 6100, 200
4 East Randolph Drive, Chicago, Illinois, on the 7th day
5 of April, 1992, at 9:00 p.m.

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 instruct him not to answer it. He's answered it
2 three times already. And he's already explained he
3 had no personal knowledge of the case prior to the
4 time he was appointed by Dan Weil to be involved in
5 it.

6 MR. OSLAN: Let's try and let him testify a
7 little bit. I'm going to ask this one more time,
8 Mr. Noonan.

9 BY MR. OSLAN:

10 Q As you sit here today, you can't testify that
11 the City's response to interrogatory No. 9 is correct;
12 is that correct?

13 A Correct, yes.

14 Q Now, I turn your attention now to
15 interrogatory No. 10.

16 A Yes.

17 Q This one says: "Describe separately every
18 condition at the Site that the City contends causes or
19 contributes to the current alleged public nuisance, and
20 for each such condition, state: a) when the condition
21 was created; or b) when the condition first caused or
22 contributed to a public nuisance."

23 And the City objects and then says:
24 "Without prejudice to or waiver of these objections, the

1 interrogatory No. 15 is not based on your personal
2 knowledge; correct?

3 A Correct.

4 Q And it is not based on knowledge of other City
5 employees, correct?

6 A Building department employees.

7 Q Or any employees you're aware of.

8 A None that I'm aware of, no.

9 Q And likewise, you're not aware of any
10 documents that support that response, that specifical?
11 discuss these issues in there, say, prior to 1980
12 context; correct?

13 A Correct.

14 Q As to the responses to both interrogatory
15 No. 10 and interrogatory No. 15, as you sit here, you
16 can't testify that those responses are true; correct?

17 A As to my personal knowledge, no.

18 Q So you don't know whether they're correct or
19 not.

20 A No.

21 Q Let me direct your attention now to
22 interrogatory No. 11. That interrogatory states as
23 follows: "State the earliest date that the City
24 contends fly dumping occurred at the Site, the date on

1 they continue to contribute to the alleged nuisance
2 after the IEPA cleanup, and identify each document and
3 each person or entity with knowledge relating to these
4 contentions."

5 And the City responds: "The City states
6 that NL's failure to test the underground storage tanks
7 for leaks and NL's abandonment of these tanks prior to
8 or at the time it transferred the Site to ARTRA created
9 a public nuisance."

10 Was the City's response to interrogatory
11 No. 13 based on your personal knowledge?

12 A No.

13 Q Was the City's response to interrogatory
14 No. 13 based on knowledge of other City employees, as
15 far as you know?

16 A Not as far as I know.

17 Q Okay. Was the City's response to
18 interrogatory No. 13 based on information contained in
19 documents in the City's files?

20 A Not to my knowledge, no.

21 Q Okay. So the City's response to interrogator
22 No. 13 is not based on the information obtained from the
23 City of Chicago records; correct?


24 A Building department records.

CERTIFICATE OF SERVICE

Copies of the foregoing DEFENDANT NL INDUSTRIES, INC.'S EXHIBITS TO ITS MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT and all supporting papers have been served on the following by messenger delivery this 15th day of November, 1995.

William Chamberlain, Esq.
Assistant Corporation Counsel
CITY OF CHICAGO
30 N. LaSalle Street, Room 900
Chicago, IL 60602
(312) 744-6075

Robert Haney, Esq.
KWIATT, SILVERMAN & RUBEN
537 N. Wells Street
Chicago, IL 60610
(312) 670-2300


Ellen Therese Ahern
One of the attorneys for NL Industries, Inc.

KIRKLAND & ELLIS
200 E. Randolph Drive, Suite 6100
Chicago, IL 60601
(312) 861-2000